From: Kupchan, Simma [Kupchan.Simma@epa.gov]

Sent: 5/1/2021 5:02:17 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]

CC: Messier, Dawn [Messier.Dawn@epa.gov]; Witt, Richard [Witt.Richard@epa.gov]; Levine, MaryEllen

[levine.maryellen@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Neugeboren, Steven

[Neugeboren.Steven@epa.gov]

Subject: Additional Materials for Monday CAFO Program Overview

Attachments: CAFO Briefing April 302021 (1 of 4).pdf; Regulatory Definitions of CAFOs (3 of 4).pdf; Signed NPPC memo to regions

12-8-11 (4 of 4).pdf

Dimple,

Attached are most of the additional materials for the <u>CAFO/Ocean Era Meeting</u> on Monday. I am attaching the largest (20 MB) document – the powerpoint that will be presented -- in a separate email, momentarily.

I am very sorry about not transmitting these earlier. I have just realized that my prior email did not go through when I sent these previously, apparently due to the large size of the attachments. I apologize that these did not make it into the binder.

Please let me know if you have any questions. Thank you for your attention.

Simma Kupchan EPA Office of General Counsel Water Law Office WJC North Building # 7426Q 202-564-3105

From: Levine, MaryEllen < levine.maryellen@epa.gov>

Sent: Thursday, April 29, 2021 9:06 AM

To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Chaudhary, Dimple

<Chaudhary.Dimple@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>

Cc: Messier, Dawn <Messier.Dawn@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>; Schwartz, Paul

<Schwartz.Paul@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>

Subject: Binder Materials for Monday 5-3 Meeting at 12:30 on Ocean Era Permit and CAFO Program Overview

Attached please find background materials to include in Dimple's and Jim's binders over the weekend for <u>a meeting on Monday, May 3rd</u> with Radhika Fox entitled "<u>CAFO and Ocean Era Pilot Scale Aquaculture Permit</u>."

There are two separate topics for Monday's meeting, this Ocean Era permit and an OW overview briefing about the Clean Water Act program for Concentrated Animal Feeding Operations. The materials in this e mail relate to the first topic, for which we need a decision as to whether to continue to defend the permit. The second topic is informational – an overview of the CAFO program. Simma Kupchan will send the OW program materials when they are available under a separate e mail.

Mary Ellen

Mary Ellen Levine Assistant General Counsel for Technology & Wet Weather Water Law Office, Office of General Counsel, U.S. EPA From: Levine, MaryEllen < levine.maryellen@epa.gov>

Sent: Wednesday, April 28, 2021 2:03 PM

To: Levine, MaryEllen < !evine.maryellen@epa.gov">!evine.maryellen@epa.gov

Subject: to send to FO Thursday

- Mary Ellen

Mary Ellen Levine Assistant General Counsel for Technology & Wet Weather Water Law Office, Office of General Counsel, U.S. EPA 202 564-1345

BRIEFING MEMO

April 2021

MEMORANDUM FOR THE ASSISTANT ADMINISTRATOR

POC: Andrew Sawyers, OWM, sawyers.andrew@epa.gov

SUBJECT: NPDES Concentrated Animal Feeding Operation (CAFO) Program

- I. **REQUESTING OFFICE:** OWM, Water Permits Division
- II. <u>TIMING:</u> No deadlines.
- III. <u>PURPOSE:</u> Provide an overview of the National Pollutant Discharge Elimination System (NPDES) CAFO program.

IV. BACKGROUND AND HISTORY:

- CAFOs are identified as point sources in the Clean Water Act (CWA).
 - The CAFO regulations include beef, dairy, pork, and poultry operations, as well as racetracks.
 - o A CAFO is required to have an NPDES permit when the number of livestock meets the definition of a large CAFO (for at least 45 days per year) **AND** when it discharges to a water of the U.S.¹
 - The regulations prohibit production area discharges other than overflows from storage structures that are designed and operated to contain all wastewater plus the rainfall from a 25-year, 24-hour rainfall event.
 - The regulations prohibit discharges from land application areas except for stormwater-related discharges when manure is applied consistent with a nutrient management plan.
- EPA first promulgated regulations to address NPDES permitting of CAFOs in the 1970s: effluent guidelines (1974) and NPDES regulations (1976).

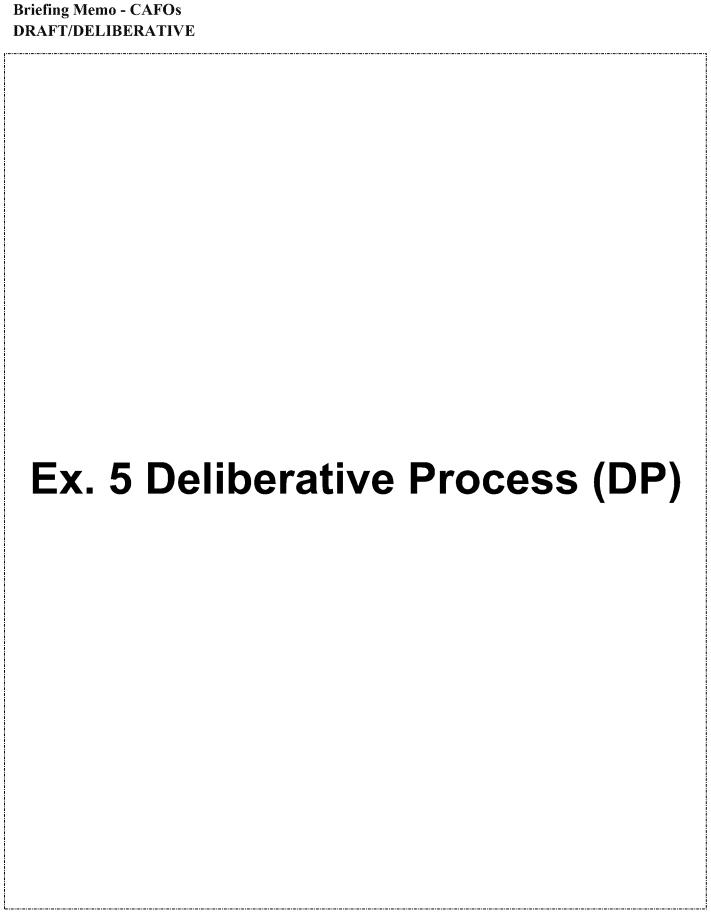
¹ Medium CAFOs may be required to obtain an NPDES permit if they (1) have a manmade conveyance (e.g., ditch/pipe) that carries manure or wastewater to a water of the U.S. or if the animals come into contact with surface water that passes through the confinement area or (2) are designated for permit coverage a case-by-case basis by the permitting authority. Small CAFOs are only required to obtain an NPDES permit if are designated for permit coverage on a case-by-case basis.

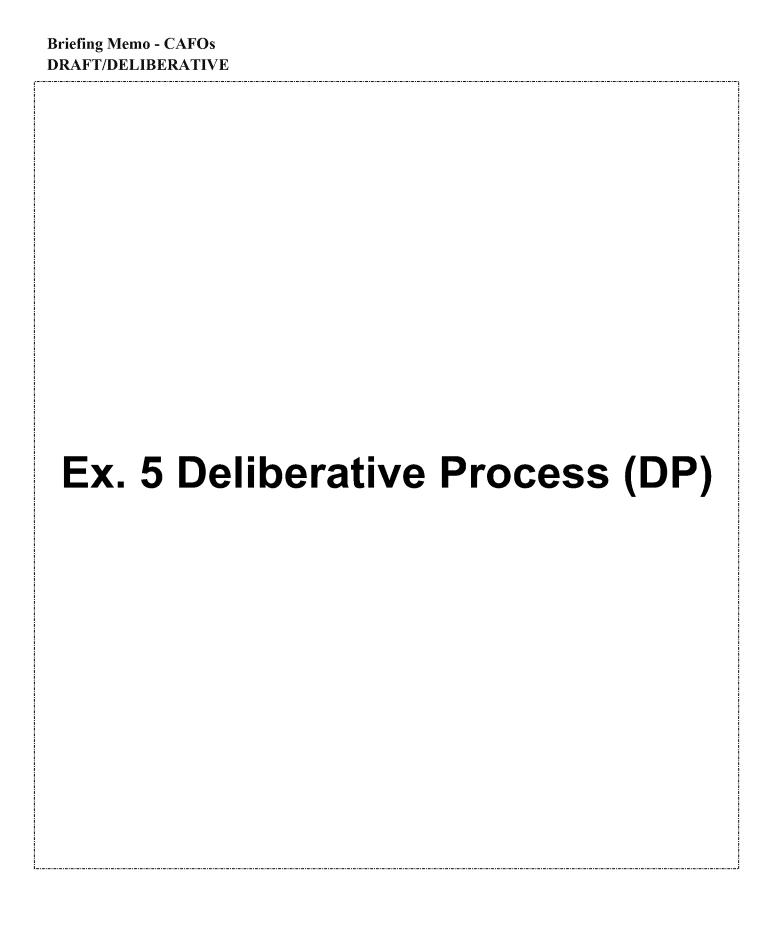
Briefing Memo - CAFOs DRAFT/DELIBERATIVE

- o These regulations did not address land application.
- The definition of CAFOs in the 1970 regs included an exclusion that resulted in many CAFOs not having permit coverage.
- In **2003**, EPA made substantial changes to both the NPDES permitting regulations and the effluent guidelines that changed the definition of a CAFO and added requirements for land application and dry litter poultry operations. The 2003 CAFO rule was challenged by Waterkeeper Alliance and other parties, including industry groups, in the Second Circuit Court of Appeals.²
 - o The court remanded significant parts of the 2003 rule, holding that all CAFOs do not need to obtain a permit and that nutrient management plan terms are part of CAFO permits and therefore must be made available for public notice.
 - O The court upheld the agency's interpretation that stormwater discharges from fields where manure is applied consistent with NMPs (i.e., at rates that crops can absorb) are nonpoint sources not subject to NPDES permitting because of the CWA section 502 "agricultural stormwater" exemption.
- In **2008**, EPA issued revisions to address the *Waterkeeper* remand. The 2008 rule was challenged by National Pork Producers Council (NPCC), Natural Resources Defense Council (NRDC) and other parties in the Fifth Circuit Court of Appeals.³
 - The Fifth Circuit issued a partial remand, holding that, according to the text of the Clean Water Act, EPA can only require CAFOs that actually discharge to obtain a permit. NRDC settled out of the NPPC lawsuit in exchange for EPA proposing the CAFO reporting rule in 2011. EPA did not finalize the CAFO reporting rule.
- In **2012**, EPA issued a revised rule that replaced the former "duty to apply" (requirement that all CAFOs apply for a permit) provision by stating that CAFOs may not discharge without an NPDES permit.
- Between 2011 and 2019, the number of permitted CAFOs in the U.S. has decreased by roughly 12% (and many others were never permitted at all) while the number of CAFOs has increased by roughly 12.6%. There are approximately 21,000 CAFOs in the U.S. and about 6,700 (32%) have NPDES coverage.

³ National Pork Producers Council v. EPA, 635 F.3d 738, 756 (5th Cir. 2011).

² Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005).





VI. <u>EPA's EFFORTS TO ENHANCE THE PROGRAM WITHIN THE</u> EXISTING REGULATORY FRAMEWORK:

- The Animal Agriculture Discussion Group (AADG), established by OWM in 2013, provides a forum for industry to engage with federal partners and permitting authorities to discuss implementation challenges and best practices.
- NRCS and EPA developed nutrient management planning tools and a series of online animal agriculture education modules.
- EPA collaborated with the U.S. Poultry & Egg Association to develop a set of compliance videos. Region 3 also collaborated with U.S. Poultry and Egg on a "What to Expect When You're Inspected" video.
- Nutrient Recycling Challenge: Significant engagement with a wide variety of stakeholders to promote innovative technologies for utilizing manure.
- Provided contractor assistance to states and tribes on discrete projects that aimed to address a particular problem or enhance a particular program.
- Continue to engage with poultry & egg sector on possibilities to simplify NMP template for non-CAFO AFOs.
- State Program Compendiums highlighting noteworthy state program features.
- ACWA-sponsored forums, biennial roundtables, and special topic engagements with state NPDES programs.

VII. <u>NEXT STEPS/UPCOMING DEADLINES:</u>

Current and Pending Issues:

• In 2017, Food & Water Watch (FWW), et al., petitioned EPA to make changes to the CAFO program.

Ex. 5 Deliberative Process (DP) of the CAFO program and Ex. 5 Deliberative Process (DP)

- o In 2017, EPA met several times with FWW to discuss their requested changes.
- o EPA has not formally responded to the petition. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- EPA is currently responding to a FOIA request from FWW requesting information on the Agency's efforts to respond to the petition.
- In 2015, a law student at the University of Colorado, petitioned EPA to make changes to the CAFO program. EPA has not formally responded to the petition.

Briefing Memo - CAFOs DRAFT/DELIBERATIVE

- In 2020, FWW challenged Region 10's Idaho CAFO General Permit in the Ninth Circuit. Oral argument is scheduled for May 6, 2021.
- In 2021 the Chesapeake Bay Foundation sent EPA a letter requesting changes to the CAFO program.
- Region 6 is in the process of reissuing the New Mexico CAFO General Permit.
 Ex. 5 Deliberative Process (DP)
- Ohio Department of Agriculture is seeking NPDES authorization to assume the CAFO permitting program from Ohio EPA.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

VIII. STAKEHOLDER PERSPECTIVES:

Ex. 5 Deliberative Process (DP)

IX. APPENDICES:

- CAFO Briefing Supplement PowerPoint: additional information, data, and figures
- Regulatory Definitions of CAFOs
- Signed memo to regions 12-8-11: CAFO Program Update after NPPC v. EPA

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 7/20/2021 6:09:17 PM

To: OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]; Chaudhary, Dimple

[Chaudhary.Dimple@epa.gov]

CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Kupchan,

Simma [Kupchan.Simma@epa.gov]

Subject: Binder Materials for 7/21 2:45pm Briefing on FWW v. EPA (304)(m)/(CAFO ELGs) Litigation w Radhika

Attachments: Briefing Paper for 7-21 2.45pm Briefing on 304(m)-CAFO Litigation.pdf

Flag: Follow up

Hi Dimple,

Attached please find the briefing paper for tomorrow's briefing with Radhika on FWW v. EPA (304(m)/CAFO litigation).

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 12/8/2021 3:00:53 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for today's meeting with WLO MGMT DIMPLEwlomgmtagenda(internal)

Attachments: DIMPLEwlomgmtagenda(internal).docx

DIMPLE/WLO MANAGEMENT WEEKLY (12/8/21) AGENDA

General

•

Diane

- Radhika or other high-level meetings next two weeks:
 - Discussion of Elizabeth's comments on the Tribal Reserved Rights and WQS proposal (Wednesday, December 8 at 11:30)
 - Legal Briefing for Elizabeth on Tribal Reserved Rights and WQS (Thursday, December 9 at 4:30)
 - o South Carolina WQS Issues with Elizabeth (Wednesday, December 15 at 4:00)
- Dimple meetings next two weeks:none
- Chesapeake check-in
- Tribal reserved rights

Carrie

- Radhika or other high-level meetings next two weeks:
 - o None
- Dimple meetings next two weeks:
 - o WOTUS briefing for Jeff P (Thursday Dec. 9 at 2 pm)
 - o Florida 404 program (Thursday Dec. 9 at 3 pm)
- Yazoo followup
- Florida letter
- Cybersecurity interpretive drinking water rule
- Lead Notice update

Mary Ellen

- Radhika or other high-level meetings next two weeks: none
- Dimple meetings next two weeks:
 - Oak Ridge for Jeff P. (Wed Dec. 8th at 4)
- City of Keene EAB brief due 12/15 (WQBELs)
- PGP mediation update
- EAD Argument defending Ocean Era permit (Thurs. Dec 9)
- Los Alamos Residual Designation municipal stormwater EPA brief 1/28
- 304(m) CAFO mediation Thurs Dec 9 at 1

<u>Alexis</u>

- Radhika or other high-level meetings next two weeks: none
- Dimple meetings next two weeks: none
- Florida Assumption NOI response letter for review + authorization for DOJ to call Plaintiffs and send letter to Services/DOJ for review

Rules defining "waters of the United States" (WOTUS) under CWA

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

• Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the
effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Ex. 5 Attorney Client (AC)

 Center for Biological Diversity No 21-cv-71154 (9th Cir.) – petition for review of EPA MSGP (multi sector general permit) for discharges of stormwater from industrial activity and the two BiOps supporting the permit. (9th Cir.)

Center for Biological Diversity No 21-cv-71306 (9th Cir.) – petition for review of EPA PGP (general permit for aerial application of pesticides to water)

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 7/12/2021 7:51:03 PM

To: OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]; Chaudhary, Dimple

[Chaudhary.Dimple@epa.gov]

CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Kupchan,

Simma [Kupchan.Simma@epa.gov]

Subject: Binder Materials for 7/13 4pm Briefing on FWW v. EPA (304)(m)/(CAFO ELGs) Litigation Options w Dimple

Attachments: Briefing Paper for 7-13 4pm Briefing on FWW v. EPA (1 of 4).pdf; Final Program Plan 14 for 7-13 4pm Briefing on

FWW v. EPA (2 of 4).pdf; Our Childrens Earth v US EPA for 7-13 4pm Briefing on FWW v. EPA (3 of 4).pdf; CAFO

Petition for Rulemaking for 7-13 4pm Briefing on FWW v. EPA (4 of 4).pdf

Hi Dimple,

We have a meeting with you from 4-4:50 pm tomorrow to discuss options for proceeding in *FWW v. EPA* (9th Cir.), which is a challenge from Food & Water Watch to statements in EPA's Final Program Plan 14 issued under CWA 304(m) indicating that EPA is not revising the CAFO ELGs at this time. The relevant documents and pages are listed below in order of importance. I think this first document is the most important and the others are background reading if you have time.

Ex. 5 Attorney Client (AC)

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Wehling, Carrie [Wehling.Carrie@epa.gov]

Sent: 8/31/2021 5:58:58 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: agency for 2 pm with WLO

Attachments: DIMPLEwlomgmtagenda(internal).docx

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

DIMPLE/WLO MANAGEMENT WEEKLY (8/31/21)

AGENDA

General

Diane

- Radhika or other high-level meetings next two weeks:
 - o New York Rec Criteria Options (Monday September 13 at 3:15 PM) [Dimple recused]
- Dimple meetings next two weeks:
 - o none
- Chesapeake: plaintiffs' response; response to motion to supplement; contact from Delaware
- Wulf Cattle heads' up

Carrie

- Radhika or other high-level meetings next two weeks:
 - LCRR options for Administrator (Tuesday August 31 at 11:30 am)
 - Maui options (Wednesday September 1 at 10:30 am)
 - Biweekly with Army on WOTUS (Tuesday September 7 at 3 pm)
 - PFAS NPDWR early guidance with Administration (Tuesday September 7)
 - LCRR briefing for Administrator, Part 2 (Thursday September 8 at 3:30 pm)
 - o Florida biweekly (Thursday September 8 at 4 pm)
- Dimple meetings next two weeks:
 - WOTUS weekly team meeting (Tuesday August 31 at 9:30 am)
 - WOTUS weekly team meeting (Tuesday September 7 at 4 pm)
- NY UIC statement of interest brief for review
- Florida biweeklies
- Yazoo and Pebble followup
- Maui meeting
- Lead delay rule litigation followup
- WOTUS schedule

MEL

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks:
- Concurrence in Preliminary 304(m) Plan Deliberative Process / ACP / AWP Ex. 5
- Update on Res Designation Case (10th Cir.)
- MSGP preliminary discussions update (9th Cir.)

Rules defining "waters of the United States" (WOTUS) under CWA

Ex. 5 Attorney Client (AC)

• Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

• Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused from litigaiton)

Deliberative Process / ACP / AWP Ex. 5

Cape Fear – & related – whether to revise Meat and Poultry Products ELGs (4th Cir.)

| effect | Ex. 5 Attorney Client (A | |
|---------|--------------------------|----|
| | Ex. 5 Attorney Client (A | C) |
| <u></u> | | |

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 9/28/2021 5:58:59 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for WLO management meeting -- DIMPLEwlomgmtagenda(internal)092821final.docx

Attachments: DIMPLEwlomgmtagenda(internal)092821final.docx

DIMPLE/WLO MANAGEMENT WEEKLY (9/28/21) <u>AGENDA</u>

General

<u>Diane</u>

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks:
 - o Chesapeake Bay Litigation with Plaintiffs (Thursday, September 30 at 3 pm)
- Chesapeake check-in

Carrie

Radhika or other high-level meetings next two weeks:

C

- Dimple meetings next two weeks:
 - WOTUS weekly team meeting (Wednesday September 29 at 1 pm)
- PFAS followup
- Yazoo followup letter coming Friday
- Petition to withdraw TX NPDES program
- LCRR Notice update
- Pascua appeal letter due Thursday

MEL

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks: none may come on MSGP or CAFOs (not yet scheduled)
- 9th Cir ID CAFO GP next steps (9th Cir.)
- 504
- VIDA meeting timing is it ok to wait for when Ex. 6 Personal Privacy (PP)

Rules defining "waters of the United States" (WOTUS) under CWA

Ex. 5 Attorney Client (AC)

• Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Ex. 5 Attorney Client (AC)

Reconsideration of Florida CWA 404 State Program Assumption

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

• Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Ex. 5 Attorney Client (AC)

 Center for Biological Diversity – petition for review of EPA MSGP (multi sector general permit) for discharges of stormwater from industrial activity and the two BiOps supporting the permit. (9th Cir.)

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 10/7/2021 1:55:57 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]

CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]

Subject: FWW v. EPA - Questions on Reconsideration

Mediation Confidential – Do Not Release

For discussion during Reg Review:

Ex. 5 AC/AWP/DP

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 10/5/2021 5:55:35 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for 2pm WLO management meeting -- DIMPLEwlomgmtagenda(internal)FINAL100521.docx

Attachments: DIMPLEwlomgmtagenda(internal)FINAL100521.docx

DIMPLE/WLO MANAGEMENT WEEKLY (10/5/21) AGENDA

General

Diane

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks:
 - O Chesapeake Ex. 5 Attorney Client (AC) (Friday, October 8, 2021 at 1:30 pm)
- Chesapeake check-in
- 401 rulemaking
- Ohio 303(d) settlement

Carrie

- Radhika or other high-level meetings next two weeks:
 - Meeting with DOJ re WOTUS overview (Tuesday October 6 at 5)
 - O Yazoo Ex. 5 Attorney Client (AC) with Radhika (Wednesday October 7 at 11)
 - o Perchlorate with Administration (Thursday, October 14 at 11:30)(Dimple recused from litigation)
- Dimple meetings next two weeks:
 - WOTUS weekly team meeting (Wednesday October 6 at 1 pm)
 - Florida standing meeting (Tuesday October 12 at 1pm)
- UIC statement of interest followup
- Yazoo Ex. 5 Attorney Client (AC) letter update
- LCRR Notice update schedule/check-in with DOJ
- LCRR delay brief update
- BH statements
- 404(c) delegation
- ASDWA letter re cybersecurity
- FYI Region 5 permits raising functional equivalence
- WOTUS EA JG is coordinating
- Criminal intent rule update
- FL ESA/NMFS update

MEL

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks: 9/21 VIDA with Tom and Chase
- 9th Cir ID CAFO GP next steps (9th Cir.)
- New lawsuit PGP (9th Cir. Food & Water Watch)
- FWW CAFO 304(m) litigation reaction before next mediation session
- Cape Fear Meats 304(m)

Rules defining "waters of the United States" (WOTUS) under CWA

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Ex. 5 Attorney Client (AC)

Reconsideration of Florida CWA 404 State Program Assumption

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the
effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Ex. 5 Attorney Client (AC)

• Center for Biological Diversity – petition for review of EPA MSGP (multi sector general permit) for discharges of stormwater from industrial activity and the two BiOps supporting the permit. (9th Cir.)

From: Wehling, Carrie [Wehling.Carrie@epa.gov]

Sent: 8/3/2021 5:59:48 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
CC: Shaw, Carla [Shaw.Carla@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]; Neugeboren, Steven

[Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; McConkey, Diane

[Mcconkey.Diane@epa.gov]

Subject: RE: WLO Management - Weekly

Attachments: DIMPLEwlomgmtagenda(internal).docx

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

----Original Appointment-----

From: Chaudhary, Dimple < Chaudhary. Dimple@epa.gov>

Sent: Thursday, February 25, 2021 11:29 AM **To:** Chaudhary, Dimple; OGC WLO MGMT

Cc: Shaw, Carla; Messier, Dawn; Neugeboren, Steven; Levine, MaryEllen; Wehling, Carrie; McConkey, Diane

Subject: WLO Management - Weekly

When: Tuesday, August 03, 2021 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Microsoft Teams meeting

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Or call in (audio only)

Ex. 6 Personal Privacy (PP) nited States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP)

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DIMPLE/WLO MANAGEMENT WEEKLY (8/3/21)

AGENDA

<u>General</u>

Diane

- Radhika or other high-level meetings next two weeks:
 - o none
- Dimple meetings next two weeks:
 - Chesapeake Bay Litigation 2 with broader EPA group (Tuesday, Aug. 3, 2021 at 4:00 pm HAVE REQUESTED A RESCHEDULE)
 - EPA Establishment of Del. River & Estuary PCB TMDL (Thursday, Aug. 5, 2021 at 4:30 pm)
 - o R10 Issuance of NPDES Permits w/ 401 Conditions for Corps Operated Columbia/Snake River Dams ("R10 Dams Permits"): Monday, Aug. 9, 2021 1:00 PM
- Heads' up on upcoming meetings
- Chesapeake check-in

Carrie

- Radhika or other high-level meetings next two weeks:
 - Early guidance on PFAS rulemaking (Tuesday August 10 at 1 pm)
 - o Regulatory options decision for LCRR (Tuesday August 10 at 4 pm)
 - Perchlorate followup (Thursday August 12 at 4 pm)(Dimple recused from litigation)
- Dimple meetings next two weeks:
 - Moot court on Pascua Yaqui hearing (Tuesday August 3 at 4 pm)
 - o WOTUS Bi-Weekly with Army (Tuesday August 10 at 3 pm)
 - WOTUS weekly team meeting (Tuesday August 10 at 1 pm)
- Cybersecurity rule followup
- Florida litigation hold
- WOTUS moot

<u>MEL</u>

- Radhika or other high-level meetings next two weeks:
 - ELG Plan meeting with Benita Best-Wong, Mon Aug 9 at 10:30
 - O Steam Rulemaking (Melissa) Thurs. Aug 12 at 10:00 Ex. 6 Personal Privacy (PP)
 - O CAFO briefing related to 304(m) case + RM petition, Tues Aug 24 at 2:30 Ex. 6 Personal Privacy (PP)
- Dimple meetings next two weeks: none
- CAFO check in.
- MSGP petition for review (9th Cir.) check in
- FYI Ex. 5 Attorney Client (AC) under consideration in OWM

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

• Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

- Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused) Ex. 5 Attorney Client (AC)
- Cape Fear & related whether to revise Meat and Poultry Products ELGs (4th Cir.)

• Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 8/17/2021 5:56:48 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for WLO Mgmt Weekly

Attachments: DIMPLEwlomgmtagenda0817final(internal).docx

DIMPLE/WLO MANAGEMENT WEEKLY (8/17/21)

AGENDA

<u>General</u>

Diane

- Radhika or other high-level meetings next two weeks:
 - New York Rec Criteria Options (Tuesday, August 24 at 2:00 pm) [Dimple recused]
- Dimple meetings next two weeks:
 - o Spokane meeting with OCIR (Wednesday August 18th at 4:30 pm)
 - Chesapeake Bay meeting with plaintiffs (Thursday August 19th at 3:00 pm)
- Spokane backgrounder for OCIR
- 401 implementation (NWPs; R10 dams permits)
- Chesapeake- attendance/talking points/draft paper re Chesapeake Executive Council

Carrie

- · Radhika or other high-level meetings next two weeks:
 - o Finalize LCRR options for Administrator (Thursday August 19 at 1 pm)
 - Biweekly with Army on WOTUS (Tuesday August 24 at 3 pm)
 - LCRR briefing for Administrator (Friday August 27 at 2:30 pm)
- Dimple meetings next two weeks:
 - o WOTUS weekly team meeting (Tuesday August 17 at 9:30 am)
 - o Florida Ex. 5 Attorney Client (AC) meeting (Wednesday August 18 at 2:30 pm)
- NY UIC statement of interest final followup
- DOJ meeting on WOTUS regulations
- WTSE followup

Ex. 6 Personal Privacy (PP)

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks:
- ELG Preliminary Plan 15
 - OST request for concurrence today
 - Schedule for signature by 9/8

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

o The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

• Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

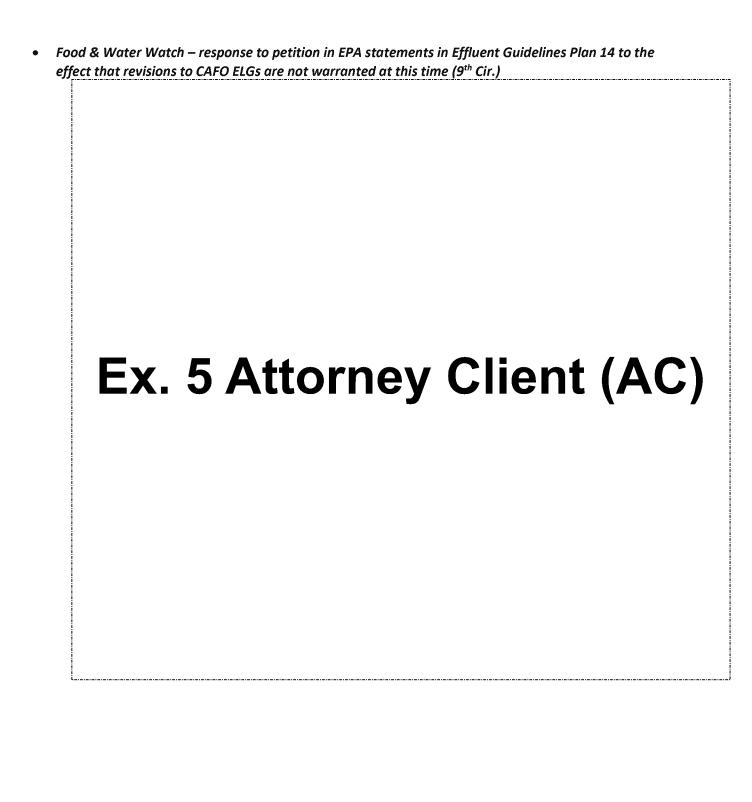
Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

- Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused) Ex. 5 Attorney Client (AC)
- Cape Fear & related whether to revise Meat and Poultry Products ELGs (4th Cir.)



Message

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 9/14/2021 5:56:28 PM

To: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]

Subject: Agenda for 2pm meeting -- DIMPLEwlomgmtagendafinal091421(internal).docx

Attachments: DIMPLEwlomgmtagendafinal091421(internal).docx

DIMPLE/WLO MANAGEMENT WEEKLY (9/14/21)

AGENDA

General

List of matters

Diane

- Radhika or other high-level meetings next two weeks:
 - Tribal Baseline WQS Rule Scope of Rule: Tuesday, September 2 at 1:00 am (with Elizabeth and Benita; Dimple not on invite)
- Dimple meetings next two weeks:
 - o Chesapeake with Elizabeth (Tuesday September 14 at 2:00 pm)
 - o Baseline WQS Rulemaking (Wednesday September 15, 2021 at 4:00 pm)
- Chesapeake
- Ohio: response to plaintiffs' latest letter prior to 9/20 mediation
- WA aquatic life criteria litigation: EPA's MSJ due 9/17

Carrie

- Radhika or other high-level meetings next two weeks:
 - o Florida Assumption oversight (Tuesday September 14 at 1 pm)
 - Pebble options (Wednesday September 15 at 3:15 pm)
 - o 404(g) rulemaking overview for Sylvia Quast (Monday September 20 at 9:30 am)
 - o WOTUS biweekly with Army (Tuesday September 21 at 3:15 pm)
 - WOTUS rulemaking overview for Sylvia Quast (Wednesday September 22 at noon)
- Dimple meetings next two weeks:
 - WOTUS weekly team meeting (Tuesday September 14 at 4 pm)
- LCRR delay litigation brief; DOJ meeting
- Followup to Florida meeting
- PFAS followup to Administrator meeting
- Maui rescission
- WOTUS schedule
- Yazoo followup

MEL

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks: none may come on MSGP or CAFOs (not yet scheduled)
- MSGP preliminary discussions update (9th Cir.)
- FWW discussions and elevation (9th Cir.) mediation discussion today

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

• Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the
effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Ex. 5 Attorney Client (AC)

 Center for Biological Diversity – petition for review of EPA MSGP (multi sector general permit) for discharges of stormwater from industrial activity and the two BiOps supporting the permit. (9th Cir.)

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 9/7/2021 5:58:10 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for today's WLO Weekly

Attachments: DIMPLEwlomgmtagenda09.07.21(internal).docx

DIMPLE/WLO MANAGEMENT WEEKLY (9/7/21)

AGENDA

General

Diane

- Radhika or other high-level meetings next two weeks:
 - New York Rec Criteria Options (Monday September 13 at 3:15 PM) [Dimple recused]
- Dimple meetings next two weeks:
 - o none
- Chesapeake: plaintiffs' response; response to motion to supplement; contact from Delaware
- Wulf Cattle heads' up

<u>Carrie</u>

- Radhika or other high-level meetings next two weeks:
 - LCRR briefing for Administrator, Part 2 (Thursday September 8 at 3:30 pm)
- Dimple meetings next two weeks:
 - o WOTUS weekly team meeting (Tuesday September 14 at 4 pm)
- LCRR delay litigation brief for review, mtg with DOJ
- LCRR -- invites to Administrator briefing, December notice
- WOTUS appeal recommendation
- Maui recission Ex. 5 Attorney Client (AC)
- WOTUS schedule

MEL

- Radhika or other high-level meetings next two weeks: Administrator Steam Wed at 11:30
- Dimple meetings next two weeks: none
- 304(m) announcements (Meats + 10.3 America Chicago, PFAS)
- MSGP preliminary discussions update (9th Cir.)
- 401 Dams Permits Ex. 5 Attorney Client (AC)
- ILOC Filing Response to Motion to Enforce the Mandate (8th Cir.)

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

• Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused from litigaiton) - Ex. 5 Attorney Client (AC Ex. 5 Attorney Client (AC)

Cape Fear – & related – whether to revise Meat and Poultry Products ELGs (4th Cir.)

| s to CAFO ELGs are not wa | ient (AC) |
|---------------------------|-----------|
| | |

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]

Sent: 7/27/2021 5:56:01 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: for the 2 pm with WLO - just Carrie and MEL today
Attachments: DIMPLEwlomgmtagenda(internal) 7 27 21.docx

- Mary Ellen

Mary Ellen Levine Assistant General Counsel for Technology & Wet Weather Water Law Office, Office of General Counsel, U.S. EPA 202 564-1345

DIMPLE/WLO MANAGEMENT WEEKLY (7/27/21)

AGENDA

General

Diane

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks:

Carrie

- Radhika or other high-level meetings next two weeks:
 - o none
- Dimple meetings next two weeks:
 - o WOTUS Bi-Weekly with Army (Tuesday July 27 at 3 pm)
 - o WOTUS weekly team meeting (Tuesday July 27 at 4 pm)
 - Meeting with Radhika on Summary of Stakeholder Input Received for LCRR (Leslie Darman/Wehling (Tuesday Aug 3 at 11 am)
- Florida followup
- Maui guidance
- Cybersecurity/sanitary survey rule followup
- Perchlorate reconsideration

MEL

- Radhika or other high-level meetings next two weeks: none
- Dimple meetings next two weeks: none
- CCR, Hall files second petition to recall mandate response due 8/2.

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

• Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

• Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused) - Ex. 5 Attorney Client (AC)

Cape Fear — & related — whether to revise Meat and Poultry Products ELGs (4th Cir.)

| Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the nat revisions to CAFO ELGs are not warranted at this time (9th Cir.) Ex. 5 Attorney Client (AC) |
|---|
| |

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 8/10/2021 5:57:45 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for our 2:00

Attachments: DIMPLEwlomgmtagenda0810(internal).docx

Dawn Messier (she/her/hers)
Deputy Associate General Counsel for Water
U.S.E.P.A.
Office of General Counsel
Water Law Office
202-564-5517

DIMPLE/WLO MANAGEMENT WEEKLY (8/10/21)

AGENDA

General

Diane

- Radhika or other high-level meetings next two weeks:
 - o California Selenium statewide final rule (Wednesday, August 11 at 1:15 pm)
 - New York Rec Criteria Options (Tuesday, August 24 at 2:00 pm) [Dimple recused]
- Dimple meetings next two weeks:
 - Chesapeake Bay Litigation 2 with broader EPA group (Wednesday, August 11 at 3 pm))
- Spokane PCBs TMDL litigat<u>ion update</u> Ex. 5 Attorney Client (AC) 401 & nationwide permits:
- Chesapeake- attendance, speaking roles at next meeting with plaintiffs

Carrie

- Radhika or other high-level meetings next two weeks:
 - o Regulatory options decision for LCRR (Thursday August 12 at 4 pm)
 - PFAS Early Guidance (Wednesday August 11 at 4:15 pm)
 - o Finalize LCRR options for Administrator (Thursday August 19 at 1 pm)
- Dimple meetings next two weeks:
 - WOTUS weekly team meeting (Tuesday August 17 at 9:30 am)
- Florida Ex. 5 Attorney Client (AC)
- Perchlorate Susannah as contact?
- NY UIC statement of interest status

MEL (AL August 16-27) Pete Ford acting first week; Jessica Zomer second week

- Radhika or other high-level meetings next two weeks:
 - o Steam Rulemaking (Melissa) Mon Aug 16 at 1:00
 - PFAS Scope Mon Aug Aug 16th at 3 pm
- Dimple meetings next two weeks:
- New decision SCAP II (9th Cir.) (EPA's reference to a statistical methodology is not a final agency action subject to judicial review)
- MSGP petition for review (9th Cir.) working on briefing for you as to **Ex. 5 Attorney Client (AC)** FYI - Ex. 5 Attorney Client (AC)
- New 8th Cir. John Hall Motion before 8th Cir. Motion to Enforce Mandate
- OWM/OST Staff working on developing options for RF on CAFO remand

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

The Vessel Incidental Discharge Act (VIDA) VIDA – Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

• EPA's oversight and implementation of Chesapeake Bay restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

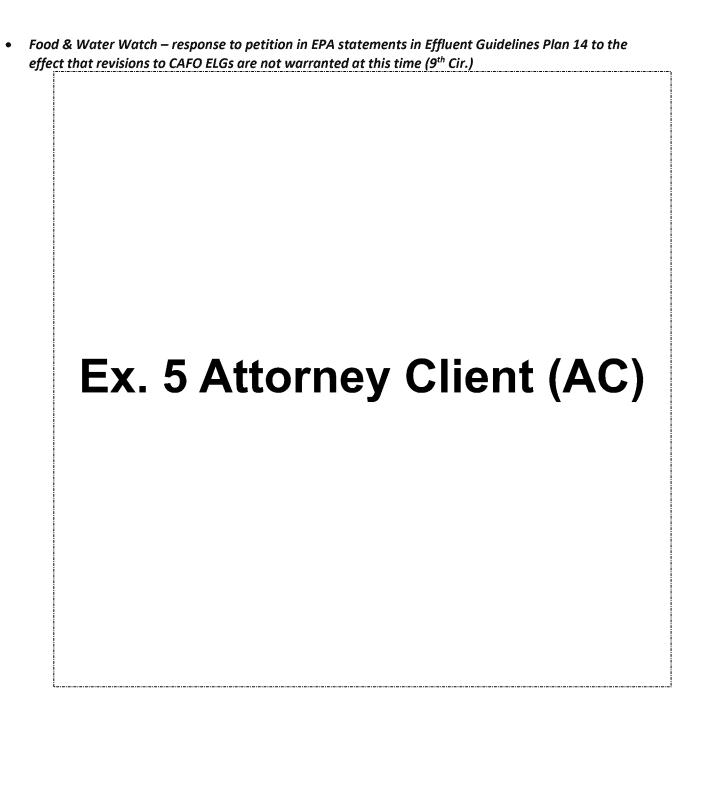
Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

Pebble Mine 404(c) action

Ex. 5 Attorney Client (AC)

- Steam Electric Effluent Guidelines (Melissa Issue/Dimple recused) Ex. 5 Attorney Client (AC)
- Cape Fear & related whether to revise Meat and Poultry Products ELGs (4th Cir.)



Message

From: Messier, Dawn [Messier.Dawn@epa.gov]

Sent: 9/21/2021 5:56:55 PM

To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]

Subject: Agenda for today -- DIMPLEwlomgmtagenda(internal).docx

Attachments: DIMPLEwlomgmtagenda(internal).docx

DIMPLE/WLO MANAGEMENT WEEKLY (9/21/21)

AGENDA

General

- MEL going first due to meeting conflict.
- PFAS legislation check in

Diane

- Radhika or other high-level meetings next two weeks:
 - o Tribal Baseline WQS Rule (Wednesday, September 22 at 12:00 pm (with Elizabeth and Benita))
- Dimple meetings next two weeks:
- Ohio mediation
- Chesapeake check-in

Carrie

- Radhika or other high-level meetings next two weeks:
 - o Benton Harbor meeting with Administrator (Wednesday September 22 at 1:30)
 - o WOTUS rulemaking overview for Sylvia Quast (Monday September 27 at 1 pm)
 - o EPW minority WOTUS briefing (Thursday September 23 at 11 am)
- Dimple meetings next two weeks:
 - o WOTUS weekly team meeting (Wednesday September 22 at 1 pm)
- Benton Harbor followup
- WOTUS schedule TSD, PR
- Yazoo followup
- PFAS paper this week
- Ninth Circuit mandamus re NWEA petition to withdraw WA program Ex. 5 Attorney Client (AC)

 Ex. 5 Attorney Client (AC)
- FYI re cybersecurity interpretive rule

MEL

- Radhika or other high-level meetings next two weeks:
- Dimple meetings next two weeks: none may come on MSGP or CAFOs (not yet scheduled)
- 9th Cir ID CAFO GP adverse decision insufficient monitoring GW discharges from prod area + land application area (9th Cir.)
- Cape Fear (4th) Meats
- FWW 9th Cir. CAFO 304(m)
- Region 1 and Reg. 9 residual designation (Charles River + LA)

Ex. 5 Attorney Client (AC)

Lead and Copper Revisions reconsideration

Ex. 5 Attorney Client (AC)

o The Vessel Incidental Discharge Act (VIDA) VIDA - Final rule

Ex. 5 Attorney Client (AC)

Construction General Permit – must go final by Jan 15, 2022

Ex. 5 Attorney Client (AC)

NEAR-TERM POLICY DECISIONS NEEDED FROM OW/ADMINISTRATOR

EPA's oversight and implementation of Chesapeake Ray restoration efforts

Ex. 5 Attorney Client (AC)

 Petition for review in the EAB of SDWA UIC permits and aquifer exemption for Dewey-Burdock/Powertech uranium mine

Ex. 5 Attorney Client (AC)

Reconsideration of scope of CWA 404(c) action for Yazoo Pumps

Ex. 5 Attorney Client (AC)

Reconsideration of Florida CWA 404 State Program Assumption

Ex. 5 Attorney Client (AC)

Perchlorate reconsideration

Ex. 5 Attorney Client (AC)

• Food & Water Watch – response to petition in EPA statements in Effluent Guidelines Plan 14 to the effect that revisions to CAFO ELGs are not warranted at this time (9th Cir.)

Ex. 5 Attorney Client (AC)

 Center for Biological Diversity – petition for review of EPA MSGP (multi sector general permit) for discharges of stormwater from industrial activity and the two BiOps supporting the permit. (9th Cir.)

Ex. 5 Attorney Client (AC)

Message

Molloy, Jennifer [molloy.jennifer@epa.gov] From:

6/16/2021 11:26:31 AM Sent:

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]

Subject: FW: FWW v. EPA (304(m)/CAFO ELGs) - Draft Briefing Paper

Attachments: CAFO Petition - Response Options.docx

<!--[if Ite mso 15 || CheckWebRef]-->

Molloy, Jennifer has shared a OneDrive for Business file with you. To view it, click the link below.



CAFO Petition - Response Options.docx

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Ex. 5 AC/DP I read through Krista's brief. Ex. 5 AC/DP Happy to do so unless someone else wants Ex. 5 AC/DP to.

Ex. 5 AC/DP

Jenny Molloy

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) (while working remotely)

(she/her/hers)

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Tuesday, June 15, 2021 5:35 PM

To: Scozzafava, MichaelE <Scozzafava.MichaelE@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Flanders, Phillip <Flanders.Phillip@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Utting, George <Utting.George@epa.gov>;

Molloy, Jennifer < molloy.jennifer@epa.gov>

Cc: Levine, MaryEllen <levine.maryellen@epa.gov>

Subject: FWW v. EPA (304(m)/CAFO ELGs) - Draft Briefing Paper

Hi 304(m) and CAFO Teams,

Ex. 5 AC/DP

Thank you, Krista

Krista Hughes

Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Hughes, Krista

Sent: Friday, May 21, 2021 2:10 PM

 $\textbf{To: Nagle, Deborah} < \underline{\text{Nagle.Deborah@epa.gov}}; \textbf{Wood, Robert} < \underline{\text{Wood.Robert@epa.gov}}; \textbf{Scozzafava, MichaelE}$

<<u>Scozzafava.MichaelE@epa.gov</u>>; Damico, Brian <<u>Damico.Brian@epa.gov</u>>; Flanders, Phillip

Flanders.Phillip@epa.gov">Flanders.Phillip@epa.gov; Sawyers, Andrew Sawyers.Andrew@epa.gov; Miller, Wynne Miller, Wynne@epa.gov; Kloss, Christopher@epa.gov; Lopez-Carbo, Maria Lopez-Carbo, Maria@epa.gov; Zobrist, Marcus@epa.gov; Zobrist, Marcus@epa.gov; Wolloy, Jennifer Molloy, Jennifer@epa.gov; Utting, George Lopez-Carbo, Maria Molloy, Jennifer@epa.gov; Utting, George Molloy, Jennifer@epa.gov;

Cc: Levine, MaryEllen < !evine, MaryEllen < !evine, MaryEllen < !evine, MaryEllen < !evine.maryellen@epa.gov; Kupchan, Simma < Kupchan, Simma < kupchan, Simma < kupchan, Simma < kupchan, Simma@epa.gov>

Subject: New Litigation - Program Plan 14 and CAFOs

Hi All,

| On May 20, 2021, Food and Water Watch filed t | he attached Petition for Review of statements in EPA's "Effluent |
|--|---|
| Guidelines Program Plan 14" indicating that revi | sion of the effluent limitations guidelines for the CAFO industrial point |
| source category is not appropriate at this time. | Ex. 5 AC/DP |
| | Ex. 5 AC/DP |

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes Krista@epa.gov

Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 5/24/2021 9:19:31 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Attachments: 1 - Petition for Review.pdf; FWW Petition SUmmary July 11.docx; FWW citizens_cafo_cwa_petition.pdf

Flag: Follow up

Just in case you don't have all of these documents in one place.

Jenny Molloy

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) (while working remotely)

From: Levine, MaryEllen < levine.maryellen@epa.gov>

Sent: Monday, May 24, 2021 5:17 PM

To: Molloy, Jennifer < molloy.jennifer@epa.gov>

Cc: Hughes, Krista < hughes.krista@epa.gov>; Kupchan, Simma < Kupchan.Simma@epa.gov>

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Hi Jenny,

More on this – Krista handling for now with Simma as a helper on CAFO substance.

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel for Technology & Wet Weather
Water Law Office, Office of General Counsel, U.S. EPA
202 564-1345

From: Levine, MaryEllen

Sent: Monday, May 24, 2021 8:46 AM

To: Hughes, Krista < hughes.krista@epa.gov>

Cc: Scozzafava, MichaelE <<u>Scozzafava.MichaelE@epa.gov</u>>; Nagle, Deborah <<u>Nagle.Deborah@epa.gov</u>>; Wood, Robert <<u>Wood.Robert@epa.gov</u>>; Kloss, Christopher <<u>Kloss.Christopher@epa.gov</u>>; Marcus Zobrist <<u>Zobrist.Marcus@epa.gov</u>>;

Kupchan, Simma < Kupchan. Simma@epa.gov>

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Krista and OST -

Ex. 5 AC/DP

Ex. 5 AC/DP

I am also attaching the 2017 rulemaking petition and draft summary so that the addresses on this e mail have it handy.

Krista is the lead for us on this as the litigation raises 304(m) issues. Ex. 5 AC/DP

Ex. 5 AC/DP

As a starting point - -

Responses to Litigation re: EPA's ELG Program Plan 14 statements not to revise CAFO regulations

Ex. 5 AC/AWP

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel for Technology & Wet Weather
Water Law Office, Office of General Counsel, U.S. EPA
202 564-1345

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Friday, May 21, 2021 2:10 PM

To: Nagle, Deborah < Nagle. Deborah@epa.gov>; Wood, Robert < Wood. Robert@epa.gov>; Scozzafava, MichaelE

<Scozzafava.MichaelE@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Flanders, Phillip.

<<u>Flanders.Phillip@epa.gov</u>>; Sawyers, Andrew <<u>Sawyers.Andrew@epa.gov</u>>; Miller, Wynne <<u>Miller.Wynne@epa.gov</u>>; Kloss, Christopher <<u>Kloss.Christopher@epa.gov</u>>; Lopez-Carbo, Maria <<u>Lopez-Carbo,Maria@epa.gov</u>>; Zobrist, Marcus <<u>Zobrist.Marcus@epa.gov</u>>; Molloy, Jennifer <<u>molloy.jennifer@epa.gov</u>>; Utting, George <<u>Utting.George@epa.gov</u>>
Cc: Levine, MaryEllen <<u>levine.maryellen@epa.gov</u>>; Kupchan, Simma <<u>Kupchan.Simma@epa.gov</u>>
Subject: New Litigation - Program Plan 14 and CAFOs

Hi All,

| E | x. 5 AC/DP |
|--|--|
| source category is not appropriate at this time. | Ex. 5 AC/DP |
| Guidelines Program Plan 14" indicating that revisi | ion of the effluent limitations guidelines for the CAFO industrial point |
| On May 20, 2021, Food and Water Watch filed th | e attached Petition for Review of statements in EPA's "Effluent |

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/19/2021 3:58:35 PM

To: Gluckman, Matthew [gluckman.matthew@epa.gov]

CC: Durant, Chelsea [durant.chelsea@epa.gov]

Subject: RE: CAFO OW Briefing planning

Matt:

We didn't take formal meeting notes for distribution, though Greg Savitske put his notes in the "meeting notes" tab from the meeting chat.

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

Ex.6 Personal Privacy (PP) (While Working remotely)

From: Gluckman, Matthew <gluckman.matthew@epa.gov>

Sent: Thursday, August 19, 2021 11:31 AM **To:** Molloy, Jennifer <molloy.jennifer@epa.gov>

Subject: RE: CAFO OW Briefing planning

Hi Jenny- Thanks for the call last week- those of us in R5 are pleased to see the focus on efforts to improve the CAFO program. We're having a follow up discussion with others in the region next Tuesday, Aug. 24 pm. My understanding is that notes were being prepared from the 8/10 call, and would perhaps be put in the folder provided to meeting participants. Do you anticipate the notes would be available prior to our internal session?

Thanks, Matt

Matt Gluckman Chief, NPDES Section 2 Permits Branch U.S. EPA Region 5, WN-15J 77 W. Jackson Blvd Chicago, Illinois 60604 312-886-6089

----Original Appointment----

From: Molloy, Jennifer < molloy.jennifer@epa.gov >

Sent: Tuesday, August 10, 2021 8:00 AM

To: Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove, Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista; Pilant,

Drew; Jann, Stephen; Gluckman, Matthew **Cc:** Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Subject: CAFO OW Briefing planning

When: Tuesday, August 10, 2021 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Ex. 6 Personal Privacy (PP)

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 AC/DP

3. Next Steps for Briefing Prep

Microsoft Teams meeting

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Or call in (audio only)

Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference Ex. 6 Personal Privacy (PP)

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Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 10/18/2021 1:49:52 PM

To: Shenk, Kelly [shenk.kelly@epa.gov]

CC: Durant, Chelsea [durant.chelsea@epa.gov]

Subject: FW: OW CAFO Strategy draft briefing

Attachments: OW CAFO Strategy draft v 15Oct.pptx

Kelly,

Here is the draft slide deck on a CAFO Strategy that I just mentioned. This hasn't been vetted through Andrew or Deborah yet. If you have any thoughts on this, I'd appreciate hearing them.

From: Zobrist, Marcus

Sent: Friday, October 15, 2021 1:25 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>

Cc: Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>; Christopher, Rebecca <Christopher.Rebecca@epa.gov>; Utting,

George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: OW CAFO Strategy draft briefing

Chris,

Attached is the draft CAFO strategy briefing. This incorporates OST's comments and edits that were received earlier today. Thanks to Jenny, George and Chelsea for drafting this, with input from OGC (Simma primarily, also Mary Ellen and Krista) and OST (Jesse, Paul and Rob).

There is a lot to unpack – maybe the next step is to have the CAFO team walk through these options with you and/or Andrew. Once you and Andrew are comfortable with this, I suggest a meeting with Andrew/Deborah and staff and OGC to discuss prior to briefing OW.



| verview. | Ex. 5 Deliberative Process (DP) |
|---------------------------------|---------------------------------|
| Ex. 5 Deliberative Process (DP) | |
| Section 1. | Ex. 5 Deliberative Process (DP) |
| Section 2. | |
| Section 3. | |
| Section 4. | |

Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES CAFO Regulations have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

- Approximately one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS, and essentially no Small CAFOs are covered under NPDES permits.
- * There are four petitions (3 water, 1 air) before the agency to revise CAFO regulations, see Appendix A

1 See also May OW briefing materials



Section 2. Ex. 5 Deliberative Process (DP)

* CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)



Section 2. Ex. 5 Deliberative Process (DP)

• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia.
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA has assessed manure from animal agriculture as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions in the US.



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)

Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

Ex. 5 Deliberative Process (DP)



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Section 3 Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



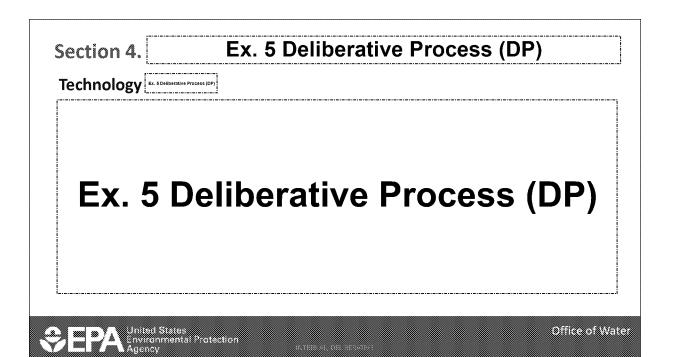
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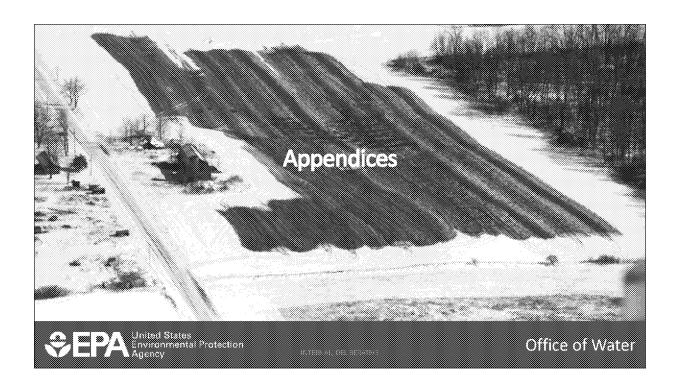


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INTERNAL, DELIBERATIVE



Appendix A. CAFO Petitions Currently Pending

There are currently 3 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



From: Kloss, Christopher [Kloss.Christopher@epa.gov]

Sent: 12/3/2021 9:27:19 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

CC: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Molloy, Jennifer

[molloy.jennifer@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Utting, George [Utting.George@epa.gov]

Subject: RE: OW CAFO Strategy revised draft for your review Attachments: OW CAFO Strategy draft 11-04-21 cjk IB CLEAN.pptx

Thanks Marcus and team.

Edits and comments are included in the attached. Overall, I think that you all have done a good job of identifying the issues and potential actions to address them. I think we still need to more clearly and concisely, for each of the issues,

Ex. 5 Deliberative Process (DP)

I've included some suggested edits. Please check them for accuracy.

Also, I think it may streamline the briefing and improve the digestibility of the large volume of info that we are conveying if, rather than presenting

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks.

From: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Sent: Tuesday, November 9, 2021 5:11 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>

Cc: Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>; Eddy, Elizabeth <Eddy.Elizabeth@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>; Utting, George <Utting.George@epa.gov>

Subject: FW: OW CAFO Strategy revised draft for your review

Chris,

Thanks for your comments and edits. Attached is a redline and the clean version of the OW CAFO Briefing. Edits were made in response to your comments and to simply the text and use more direct language throughout.

Thanks to Chelsea and George for their assistance with these edits.

From: Kloss, Christopher < Kloss. Christopher@epa.gov>

Sent: Friday, November 5, 2021 4:46 PM

To: Zobrist, Marcus <<u>Zobrist.Marcus@epa.gov</u>>; Lopez-Carbo, Maria <<u>Lopez-Carbo.Maria@epa.gov</u>> **Cc:** Baehr, Joshua <<u>Baehr.Joshua@epa.gov</u>>; Eddy, Elizabeth <<u>Eddy.Elizabeth@epa.gov</u>>; Molloy, Jennifer

<molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: RE: OW CAFO Strategy revised draft for your review

Hey all,

Overall, the layout of the briefing is good. I think the way that it was structured and how it identifies the problems and fixes works well. The text, though, still needs some work. I've edited the first 9½ slides, up through [EX. 5 Deliberative Process (DP)] on slide 10. Most of the edits are intended to simply text and use more direct language. A couple of specific notes:

Ex. 5 Deliberative Process (DP)

Please send back a revised version by COB Tuesday. We are working to schedule time with Radhika this month but need to get this wrapped up and approved by Andrew and Wynne before we can do that.

Thanks

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Friday, October 29, 2021 4:37 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>; Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov> Cc: Baehr, Joshua < Baehr. Joshua@epa.gov>; Eddy, Elizabeth < Eddy. Elizabeth@epa.gov>; Molloy, Jennifer

<molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: OW CAFO Strategy revised draft for your review

Chris,

Attached is an updated CAFO Strategy briefing for your review.

Key changes include a discussion on enforcement (slide 4 – this has been reviewed by OECA) and Section 5 on

Ex. 5 Deliberative Process (DP)

This Section was added in response to Andrew's request for Ex.5 Deliberative Process (DP)

approaches. Thanks to Kelly, Josh Baehr, Jenny for developing this section.

Ex. 5 Deliberative Process (DP)

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 10/29/2021 8:37:22 PM

To: Kloss, Christopher [Kloss.Christopher@epa.gov]; Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]
CC: Baehr, Joshua [Baehr.Joshua@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Molloy, Jennifer

[molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

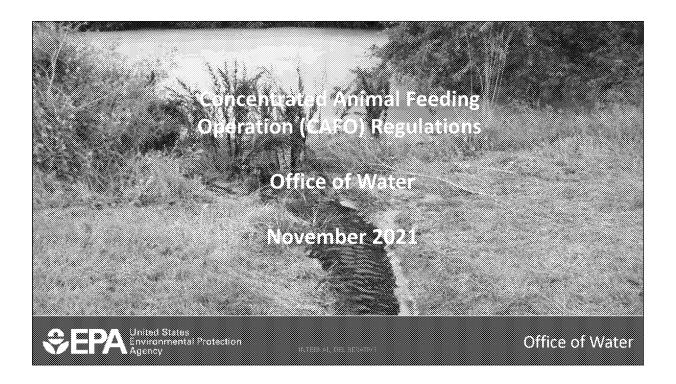
Subject: OW CAFO Strategy revised draft for your review

Attachments: OW CAFO Strategy draft v 29Oct.pptx

Chris,

Attached is an updated CAFO Strategy briefing for your review.

Ex. 5 Deliberative Process (DP)



Outcomes for Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Section 5. United States Environmental Protection

Section 1.

Ex. 5 Deliberative Process (DP)

NPDES CAFO Regulations have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines
have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

- Approximately one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS, and essentially no Small CAFOs are covered under NPDES permits.
- There are four petitions (3 water, 1 air) before the agency to revise CAFO regulations Ex. 5 Deliberative Process (DP)

¹ See also May OW briefing materials



Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches
 were tried to increase Clean Water Act compliance and NPDES permit coverage. During the last eight years of the
 NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial
 actions
- Since FY19, CAFOs have been returned to the NPDES core program.

No new EPA civil judicial actions in recent years because:

• NPDES is a "state-driven" program –i.e., majority of states (47) are authorized to implement the program so they issue most permits, conduct most inspections, and take most enforcement actions.

Ex. 5 Deliberative Process (DP)



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Section 2.

Ex. 5 Deliberative Process (DP)

* CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)



• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia.
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA has assessed manure from animal agriculture as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions in the US.



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



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Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Section 3. Ex. 5 Deliberative Process (DP)

Office of Water Agency Protection

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



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Section 4. Ex. 5 Deliberative Process (DP) Technology Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Office of Water

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)

Section 4.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

INTERNAL, DELIBERATIVE

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

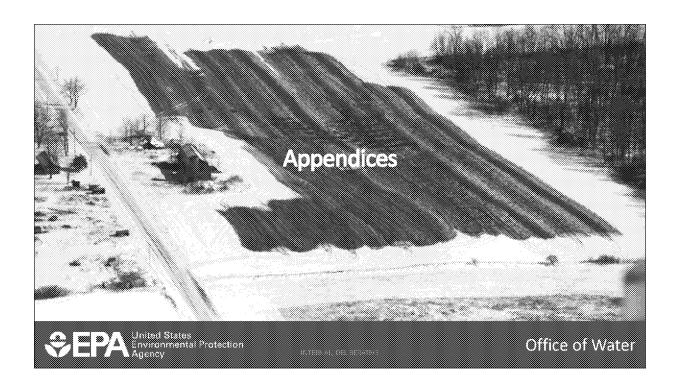
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)





Appendix A. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
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- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Message

From: Kloss, Christopher [Kloss.Christopher@epa.gov]

Sent: 11/5/2021 8:45:57 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]

CC: Baehr, Joshua [Baehr.Joshua@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Molloy, Jennifer

[molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

Subject: RE: OW CAFO Strategy revised draft for your review

Attachments: OW CAFO Strategy draft 11-04-21 cjk.pptx

Hey all,

Overall, the layout of the briefing is good. I think the way that it was structured and how it identifies the problems and fixes works well. The text, though, still needs some work. I've edited the first 9½ slides, **Ex. 5 Deliberative Process (DP)** on slide 10. Most of the edits are intended to simply text and use more direct language. A couple of specific notes:

Ex. 5 Deliberative Process (DP)

Please send back a revised version by COB Tuesday. We are working to schedule time with Radhika this month but need to get this wrapped up and approved by Andrew and Wynne before we can do that.

Thanks

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Sent: Friday, October 29, 2021 4:37 PM

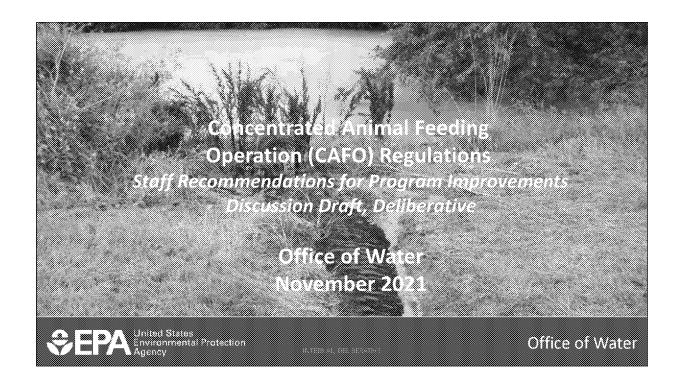
To: Kloss, Christopher <Kloss.Christopher@epa.gov>; Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>
Cc: Baehr, Joshua <Baehr.Joshua@epa.gov>; Eddy, Elizabeth <Eddy.Elizabeth@epa.gov>; Molloy, Jennifer
<molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: OW CAFO Strategy revised draft for your review

Chris,

Attached is an updated CAFO Strategy briefing for your review.

Ex. 5 Deliberative Process (DP)



Briefing Overview

- *Section 1.
- Section 2.
- *Section 3. Ex. 5 Deliberative Process (DP)
- *Section 4.
- *Section 5.



 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

- Approximately one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.
- There are four petitions (3 water, 1 air) before the agency to revise CAFO regulations **Ex. 5 Deliberative Process (DP)**[8.5 Deliberative Process (DP)]



Focus of EPA Enforcement:

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Ex. 5 Deliberative Process (DP)



CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
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Ex. 5 Deliberative Process (DP)



*Odors are one of the most common complaints associated with CAFOs. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- * Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water

Ex. 5 Deliberative Process (DP)

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Office of Water

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Ex. 5 Deliberative Process (DP)



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Section 4. Ex. 5 Deliberative Process (DP)

Technology (2.5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

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Section 5.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



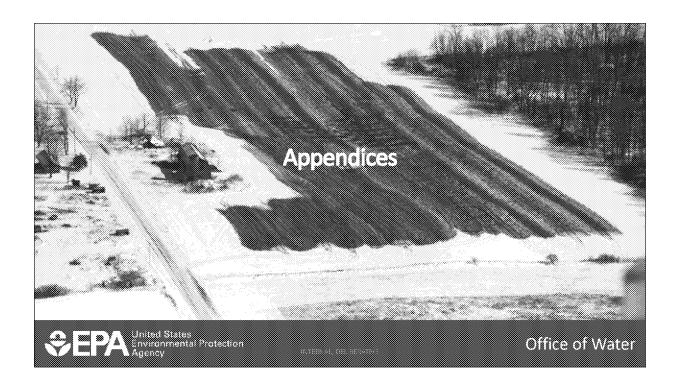
Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Appendix A. CAFO Petitions Currently Pending

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- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 1/3/2022 3:13:03 AM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: Revised OW CAFO Strategy briefing

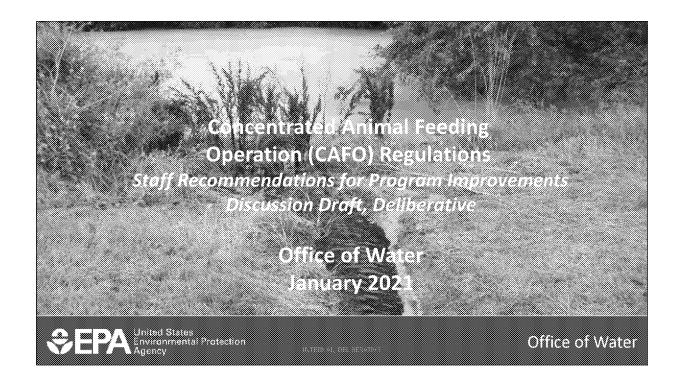
Attachments: OW CAFO Strategy breifing draft 12 30 2021.pptx

Flag: Follow up

Jenny, George, Chelsea,

Attached is a revised briefing document. This responds to Chris' comments and I also made additional edits to shorten and simply. It is now about 10 slides shorter. (the deleted slides are still included at the end so you can see what was deleted). Please review and let's discuss at our meeting on Monday afternoon at 2:30.

Additionally, I suggest some additional background slides on the # of CAFOs from the recent OGC briefing. I'll forward these in the next email.



Briefing Overview

- *Section 1.
- *Section 2.
- *Section 3.
- *Section 4.

Ex. 5 Deliberative Process (DP)



Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are not covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process

There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Section 2.

Ex. 5 Deliberative Process (DP)

CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (*E. coli*).

Ex. 5 Deliberative Process (DP)



Odors are one of the most common complaints associated with CAFOs. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- * Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.



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Ex. 5 Deliberative Process (DP)

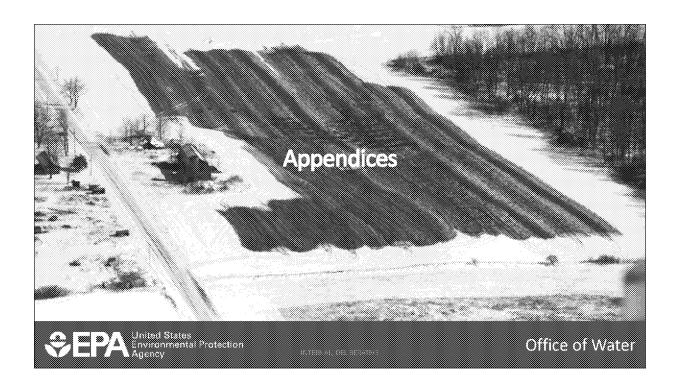


Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)





Appendix A. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
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All slides after this suggest to be deleted

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Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches were tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- Since FY19, CAFOs have been returned to the NPDES core program.

No New EPA Civil Judicial Actions in Recent Years Because:

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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Message

From: Shriner, Paul [Shriner.Paul@epa.gov]

Sent: 10/5/2021 4:10:09 AM

To: Utting, George [Utting.George@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Zobrist, Marcus

[Zobrist.Marcus@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

CC: Pritts, Jesse [Pritts.Jesse@epa.gov]

Subject: RE: comments/suggestions/feedback on draft CAFOs strategy **Attachments**: CAFO ideas.pptx; OW CAFO Strategy draft 092721_ps.pptx

Noting we have not yet discussed with OST management. Happy to brainstorm, discuss further, etc.

-Paul

CAFO rule Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

• Majority of CAFOs don't have permits:

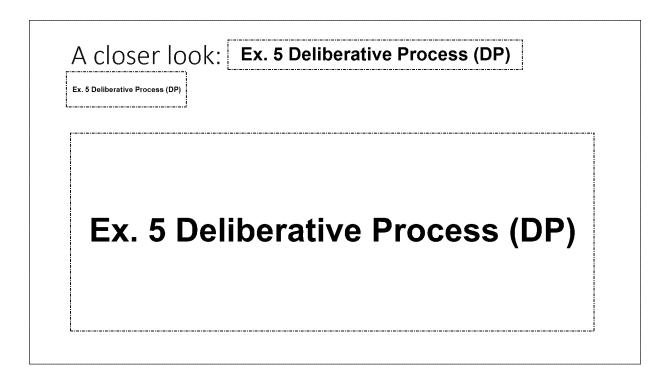
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Overview of Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Section 5. CAFO Petitions Currently Pending Section 6. Ex. 5 Deliberative Process (DP)

Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES Regulations for CAFOs have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

 Approximately only one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways¹.
- Pollutants associated with CAFO animal waste include: nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (e. coli).

Ex. 5 Deliberative Process (DP)

⁴ 9th Cotting 2003 rule



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• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia².
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - · While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions³.

Ex. 5 Deliberative Process (DP)



EPA regulates both production areas and land-application areas of CAFOs.

Ex. 5 Deliberative Process (DP)

• EPA's CAFO-specific regs include the CAFO ELG (40 CFR 412) and permitting regs at 40 CFR 122.23.



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Section 4.

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Section 4. Ex. 5 Deliberative Process (DP)
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Section 5. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

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- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



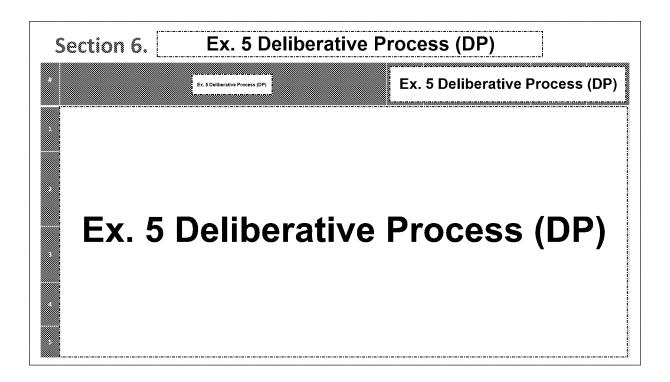
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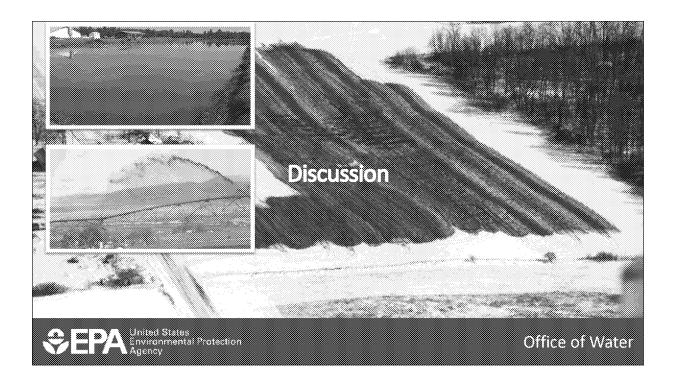


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Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 1/4/2022 5:54:54 PM

To: Kloss, Christopher [Kloss.Christopher@epa.gov]

CC: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Lynch, Marissa

[Lynch.Marissa@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov];

Durant, Chelsea [durant.chelsea@epa.gov]

Subject: FW: Revised CAFO briefing

Attachments: OW CAFO Strategy breifing draft 1 4 2022 v2.pptx

Chris,

Attached is a somewhat revised PowerPoint for the Andrew briefing. The following changes were made:

Ex. 5 Deliberative Process (DP)

Sorry for the multiple versions, but I think this is an improvement.

From: Molloy, Jennifer < molloy.jennifer@epa.gov>

Sent: Tuesday, January 04, 2022 10:49 AM **To:** Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Cc: Utting, George < Utting.George@epa.gov>; Durant, Chelsea < durant.chelsea@epa.gov>

Subject: RE: Revised CAFO briefing

Marcus, Chelsea and George:

Attached are a few revisions to the ppt as well as en e-mail from Kathy Greenwald re: the OECA slide.

I've made the following changes:

Ex. 5 Deliberative Process (DP)

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

[EX. © Personal Privacy (PP)] (While Working remotely)

From: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Sent: Monday, January 3, 2022 5:27 PM

To: Kloss, Christopher <Kloss.Christopher@epa.gov>

Cc: Molloy, Jennifer <<u>molloy.jennifer@epa.gov</u>>; Utting, George <<u>Utting.George@epa.gov</u>>; Durant, Chelsea <durant.chelsea@epa.gov>; Eddy, Elizabeth <<u>Eddy.Elizabeth@epa.gov</u>>; Lynch, Marissa <<u>Lynch.Marissa@epa.gov</u>>;

Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov > Subject: Revised CAFO briefing

Chris,

Attached is a revised CAFO briefing document. This responds to your comments and also includes further edits to shorten, simplify, clarify and reorder.

Ex. 5 Deliberative Process (DP)

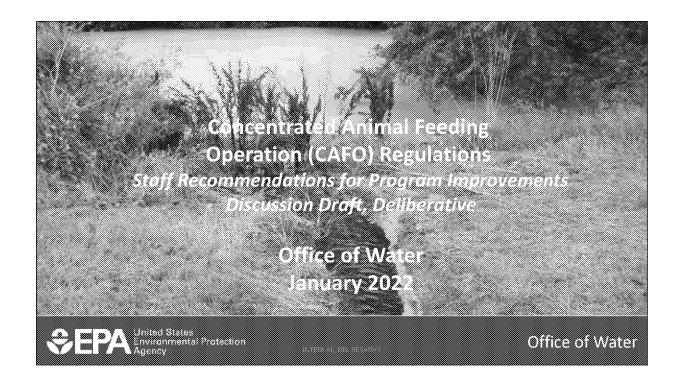
Attached is a CLEAN version and a version with your comments and my responses. In the non-CLEAN version, you can review responses to your commentson the prior version and the deleted slides are still included at the end so you can see what was deleted. It might be easier to just review the CLEAN version.

This version was reviewed closely by Jenny, George, Chelsea and I. Sorry for the delay getting this to you but this was the first day in about a month that the CAFO team was all together.

Marcus Zobrist | Chief, Industrial Branch

U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-8311 | Mobile: | Ex. 6 Personal Privacy (PP) |
Zobrist Marcus@epa.gov

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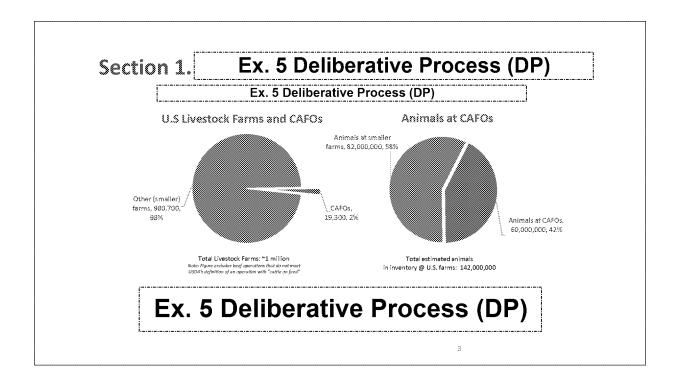


Briefing Overview

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- *Section 3.
- *Section 4.

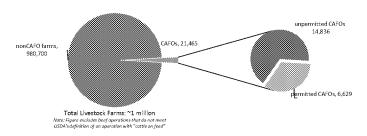
Ex. 5 Deliberative Process (DP)





Section 1. Ex. 5 Deliberative Process (DP)

Livestock Farms, CAFOs, and Permitted CAFOs <1 percent of livestock farms have NPDES permits



• Approximately 30 % of CAFOs have federal NPDES permits

Data Sources: 2012 USDA Census of Agriculture; EPA NP DES CAFO 2020 Status Report

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Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are <u>not</u> covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)

* There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) | See Appendix B.



Section 2. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria
 including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)

- USDA estimates that appropriate nutrient management practices are not followed for 92% of manured acres.
- * Manure, litter, and process wastewater transferred to a non-CAFO operator are not subject to any federal controls per the regulations. CAFOs export as much as 70% of their manure off site.



Section 2.

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Odors are one of the most common complaints associated with CAFOs.

Ex. 5 Deliberative Process (DP)

- Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - * EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.

United States Environmental Protection Agency

Office of Water





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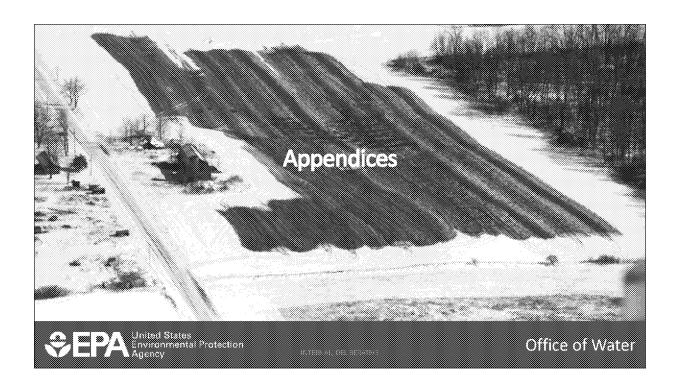


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Section 4. Ex. 5 Deliberative Process (DP)





Appendix A. Ex. 5 Deliberative Process (DP)

Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches were
 tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted
 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- * Since FY19, CAFOs have been returned to the NPDES core program.

No New EPA Civil Judicial Actions in Recent Years Because:

A majority of states (47) are authorized to implement NPDES programs, so they conduct most inspections and take
most enforcement actions.

Ex. 5 Deliberative Process (DP)



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Appendix B. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

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Appendix C. Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



Appendix C. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Office of Water Process (DP)

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 1/3/2022 3:35:32 AM

To: Molloy, Jennifer [molloy, jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: Revised CAFO breifing document - please review by 2:30 today

Attachments: OW CAFO Strategy breifing draft 1 3 2022.pptx

Importance: High
Flag: Follow up

Jenny, George, Chelsea,

Happy New Year!

Attached is a revised CAFO briefing document. This responds to Chris' comments and I also made additional edits to shorten and simply. Also, I added some additional background slides on the # of CAFOs from the recent OGC briefing (these are in an different slide format). It is now about 10 slides shorter, the deleted slides are still included at the end so you can see what was deleted.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Responses to Chris' comments are included, as are

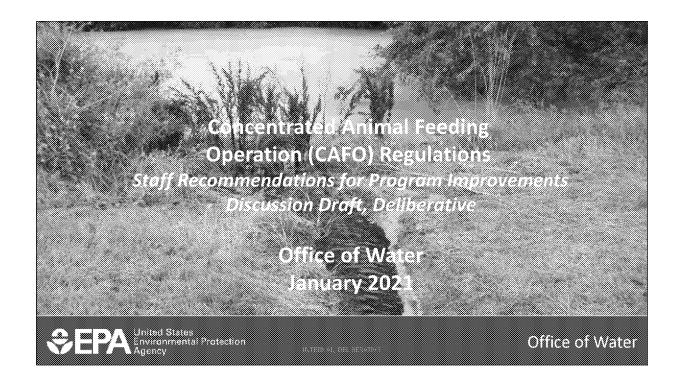
some non-editorial edits in redline/strikeout.

Please review and let's discuss at our meeting on Monday afternoon at 2:30. We will send a final slide deck to Chris after this meeting.

Marcus Zobrist | Chief, Industrial Branch

U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-8311 | Mobile: | Ex. 6 Personal Privacy (PP) |
Zobrist Marcus @epa.gov

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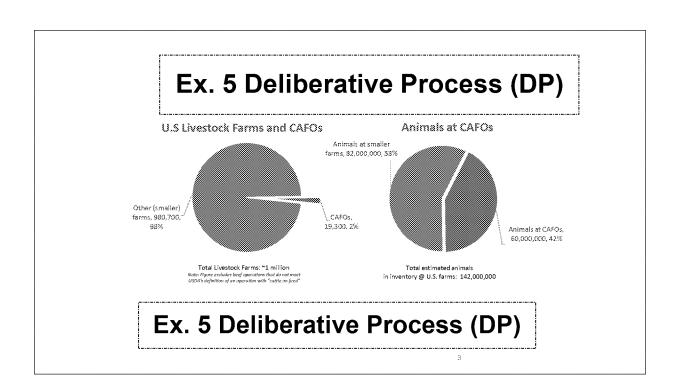


Briefing Overview

- *Section 1.
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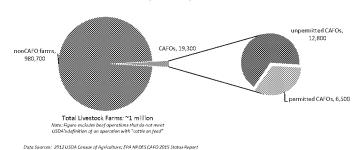
Ex. 5 Deliberative Process (DP)





Ex. 5 Deliberative Process (DP)

Livestock Farms, CAFOs, and Permitted CAFOs



- Approximately 6,500 CAFOs have federal NPDES permits (<1 percent of all livestock farms)
- Livestock farms also must meet a variety of regulatory requirements specific to each of the 50 states

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Section 1.

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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Section 2.

Ex. 5 Deliberative Process (DP)

CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
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Ex. 5 Deliberative Process (DP)



Odors are one of the most common complaints associated with CAFOs. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

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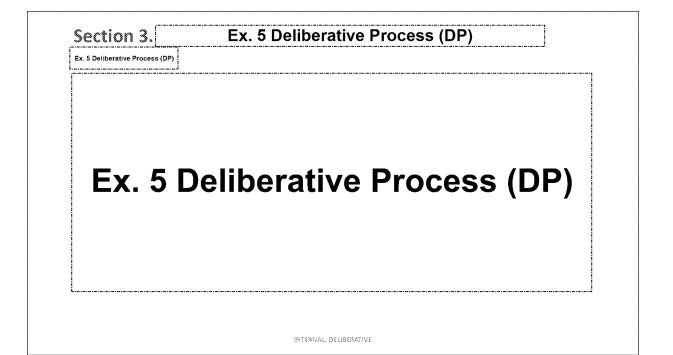
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Section 3. Ex. 5 Deliberative Process (DP)

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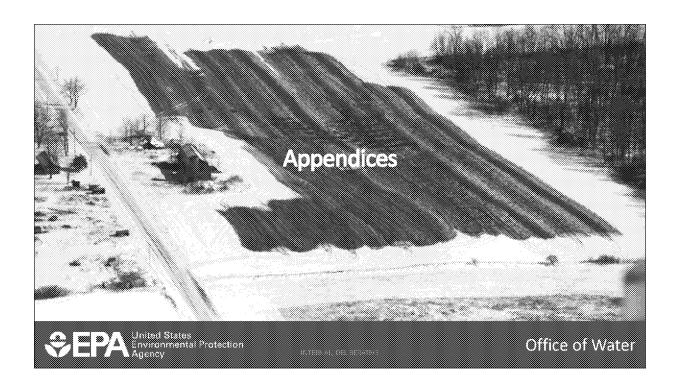


Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)





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- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



All slides after this suggest to be deleted

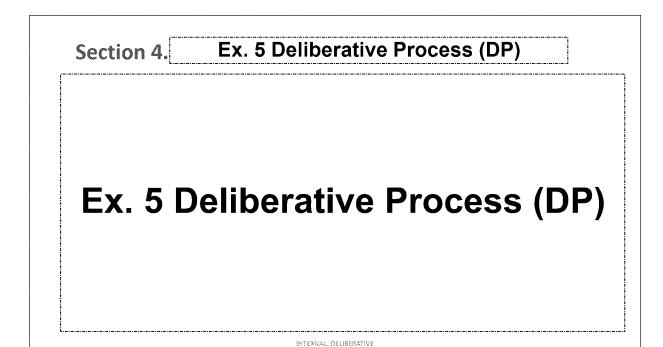
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Ex. 5 Deliberative Process (DP)



Focus of EPA Enforcement:

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- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- Since FY19, CAFOs have been returned to the NPDES core program.

No New EPA Civil Judicial Actions in Recent Years Because:

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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 1/3/2022 10:26:58 PM

To: Kloss, Christopher [Kloss.Christopher@epa.gov]

CC: Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Lynch, Marissa [Lynch.Marissa@epa.gov];

Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]

Subject: Revised CAFO briefing

Attachments: OW CAFO Strategy breifing draft 1 4 2022 CLEAN.pptx; OW CAFO Strategy breifing draft 1 4 2022.pptx

Chris,

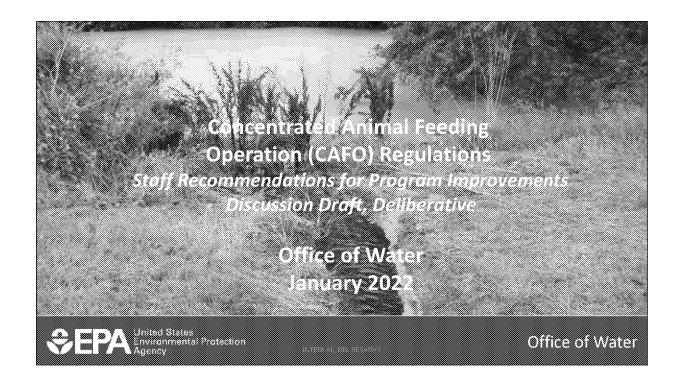
Attached is a revised CAFO briefing document. This responds to your comments and also includes further edits to shorten, simplify, clarify and reorder. With some additional background slides it is now about 10 slides shorter.

Attached is a CLEAN version and a version with your comments and my responses. In the non-CLEAN version, you can review responses to your commentson the prior version and the deleted slides are still included at the end so you can see what was deleted. It might be easier to just review the CLEAN version.

This version was reviewed closely by Jenny, George, Chelsea and I. Sorry for the delay getting this to you but this was the first day in about a month that the CAFO team was all together.

Marcus Zobrist |
Chief, Industrial Branch
U.S. Environmental Protection Agency
Office of Wastewater Management J. Malac. Permits Division
Office: (202) 564-8311 Mobile: Ex. 6 Personal Privacy (PP)
Zobrist Marcus @epa.gov

This e-mail is intended solely for the use of the individual or entity to whom it is addressed and its content shall be regarded as confidential unless explicitly stated otherwise. If you have received this e-mail by mistake, please notify the sender immediately by e-mail and delete this e-mail from your system.

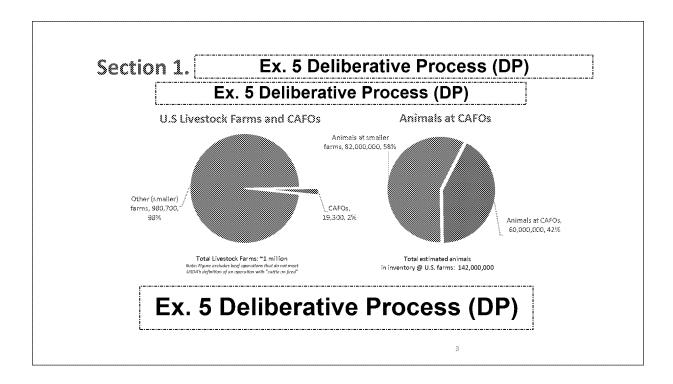


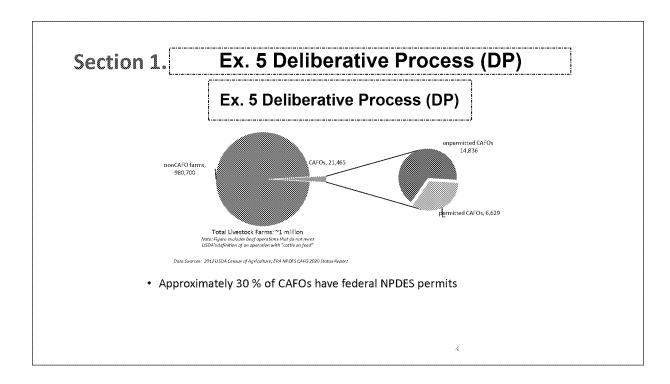
Briefing Overview

- *Section 1.
- Section 2.
- *Section 3.
- *Section 4.

Ex. 5 Deliberative Process (DP)







 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are <u>not</u> covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)

There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) See Appendix B.



Section 2.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria including *E. coli*; antibiotics and other drugs; metals; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)

 USDA estimates that appropriate nutrient management practices are not followed for 92% of manured acres.

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

* Odors are one of the most common complaints associated with CAFOs.

Ex. 5 Deliberative Process (DP)

- Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - * EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.



Office of Water

Ex. 5 Deliberative Process (DP)

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Section 3. Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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Section 3. Ex. 5 Deliberative Process (DP)
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Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



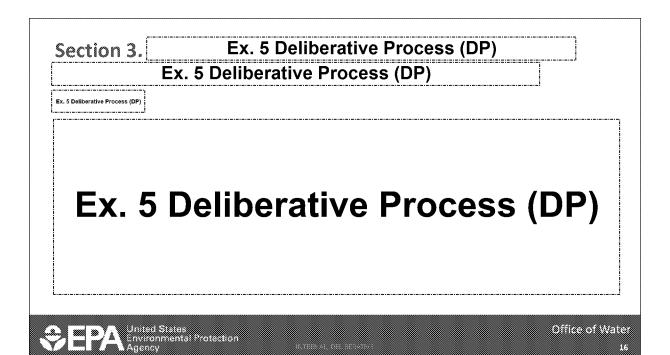
Section 3. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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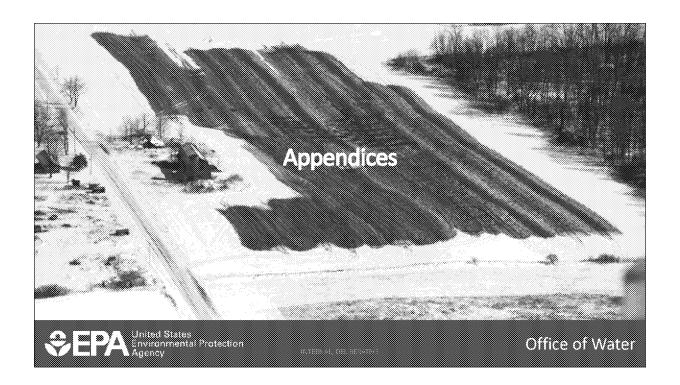


Section 4.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)





Appendix A. Ex. 5 Deliberative Process (DP)

Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches were tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- Since FY19, CAFOs have been returned to the NPDES core program.

Ex. 5 Deliberative Process (DP)



Office of Water

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Appendix B. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Appendix C. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Appendix C. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



All slides after this suggest to be deleted

INTERNAL, DELIBERATIVE

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Section 4.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Section 4. Ex. 5 Deliberative Process (DP)

Technology

Ex. 5 Deliberative Process (DP)

Section 4. Ex. 5 Deliberative Process (DP)

Office of Water Process (DP)

Ex. 5 Deliberative Process (DP)



Section 5. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 11/9/2021 10:11:00 PM

To: Kloss, Christopher [Kloss.Christopher@epa.gov]

CC: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Eddy, Elizabeth [Eddy.Elizabeth@epa.gov]; Molloy, Jennifer

[molloy.jennifer@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Utting, George [Utting.George@epa.gov]

Subject: FW: OW CAFO Strategy revised draft for your review

Attachments: OW CAFO Strategy draft 11-04-21 cjk IB.pptx; OW CAFO Strategy draft 11-04-21 cjk IB CLEAN.pptx

Chris,

Thanks for your comments and edits. Attached is a redline and the clean version of the OW CAFO Briefing. Edits were made in response to your comments and to simply the text and use more direct language throughout.

Thanks to Chelsea and George for their assistance with these edits.

From: Kloss, Christopher < Kloss. Christopher@epa.gov>

Sent: Friday, November 5, 2021 4:46 PM

To: Zobrist, Marcus < Zobrist. Marcus@epa.gov>; Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov>

Cc: Baehr, Joshua <Baehr.Joshua@epa.gov>; Eddy, Elizabeth <Eddy.Elizabeth@epa.gov>; Molloy, Jennifer

<molloy.jennifer@epa.gov>; Utting, George < Utting.George@epa.gov>; Durant, Chelsea < durant.chelsea@epa.gov>

Subject: RE: OW CAFO Strategy revised draft for your review

Hey all,

Overall, the layout of the briefing is good. I think the way that it was structured and how it **Ex. 5 Deliberative Process (DP)** works well. The text, though, still needs some work. I've edited the first 9½ slides, up through Ex. 5 Deliberative Process (DP) on slide 10. Most of the edits are intended to simply text and use more direct language. A couple of specific notes:

Ex. 5 Deliberative Process (DP)

1. For a text editing example, the first bullet of recommendations on slide 11 about the Ex. 5 Deliberative Process (DP)

2.

Ex. 5 Deliberative Process (DP)

3. Slide 22 needs to be reworked or deleted.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Please send back a revised version by COB Tuesday. We are working to schedule time with Radhika this month but need to get this wrapped up and approved by Andrew and Wynne before we can do that.

Thanks

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Friday, October 29, 2021 4:37 PM

To: Kloss, Christopher < <u>Kloss.Christopher@epa.gov</u>>; Lopez-Carbo, Maria < <u>Lopez-Carbo.Maria@epa.gov</u>> **Cc:** Baehr, Joshua < <u>Baehr.Joshua@epa.gov</u>>; Eddy, Elizabeth < <u>Eddy.Elizabeth@epa.gov</u>>; Molloy, Jennifer

<molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: OW CAFO Strategy revised draft for your review

Chris,

Attached is an updated CAFO Strategy briefing for your review.

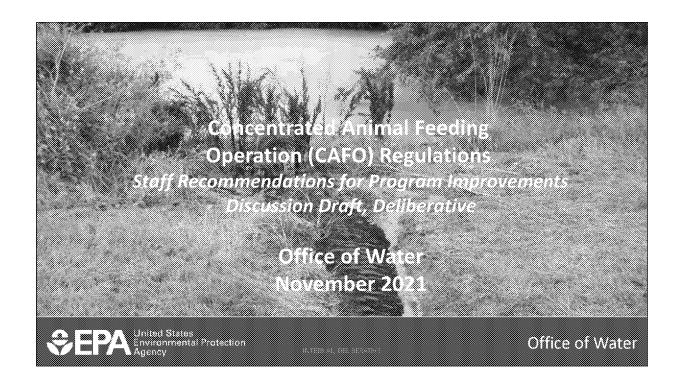
Key changes include a discussion on enforcement (slide 4 – this has been reviewed by OECA) and Section 5 on

Ex. 5 Deliberative Process (DP)

This Section was added in response to Andrew's request for Ex. 5 Deliberative Process (DP)

approaches. Thanks to Kelly, Josh Baehr, Jenny for developing this section.

Ex. 5 Deliberative Process (DP)



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Section 1.

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

• There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations [Ex. 5 Deliberative Process (DP) | Ex. 1 Deliberative Process (DP) | Ex. 2 Deliberative Process (DP) | Ex. 2 Deliberative Process (DP) | Ex. 3 Deliberative Process (DP) | Ex. 4 Deliberative Process (DP) | Ex. 5 Deliberative



Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches
 were tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA
 conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- Since FY19, CAFOs have been returned to the NPDES core program.

No New EPA Civil Judicial Actions in Recent Years Because:

Ex. 5 Deliberative Process (DP)



CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- * Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria including *E. coli*; antibiotics and other drugs; metals; pesticides; and hormones.
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Ex. 5 Deliberative Process (DP)



Odors are one of the most common complaints associated with CAFOs. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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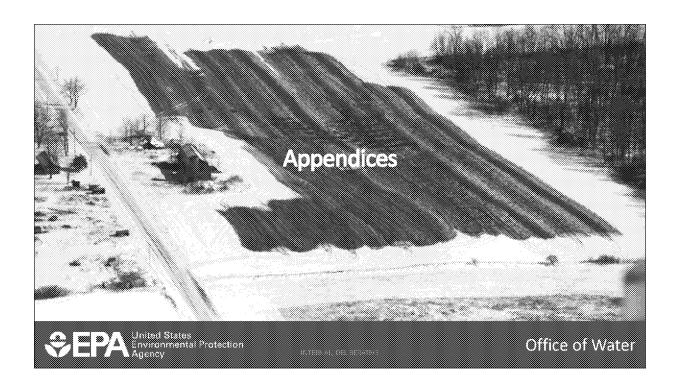
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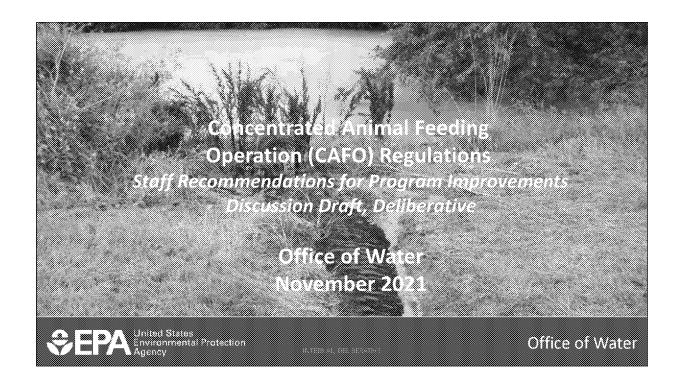


Appendix A. CAFO Petitions Currently Pending

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Ex. 5 Deliberative Process (DP)



Section 1. Background on CAFO Program Challenges

 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are <u>not</u> covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)

* There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) | See Appendix A.



Focus of EPA Enforcement:

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Ex. 5 Deliberative Process (DP)



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Section 2.

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



* Odors are one of the most common complaints associated with CAFOs. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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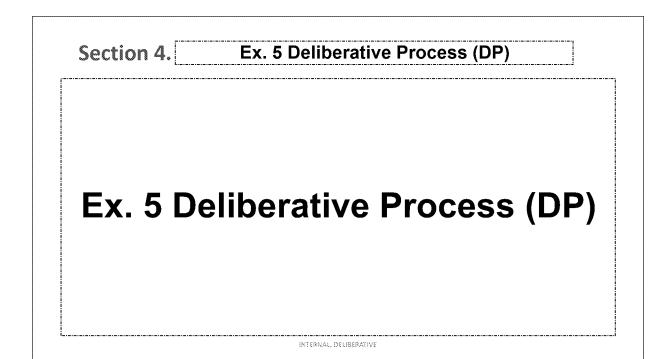
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Section 4.

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Section 5.

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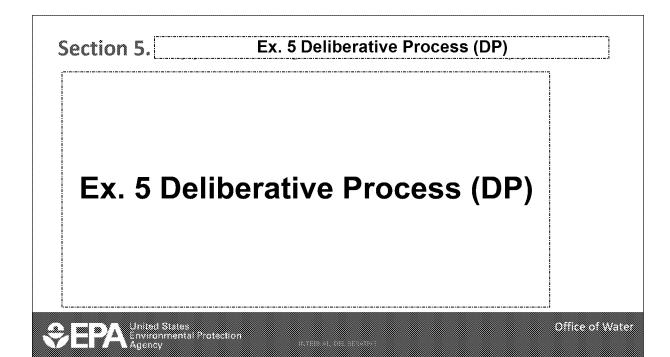


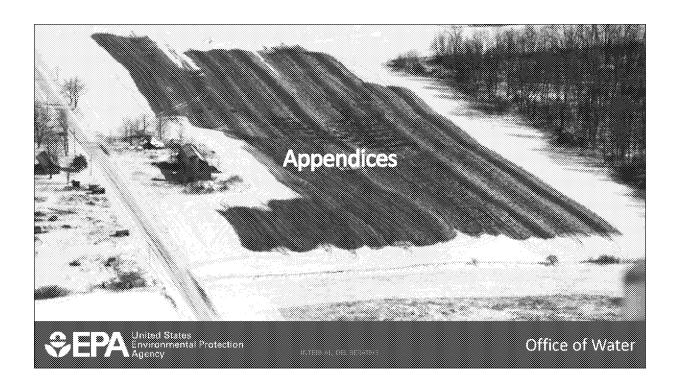
Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)







Appendix A. CAFO Petitions Currently Pending

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Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 1/4/2022 3:49:20 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

CC: Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

Subject: RE: Revised CAFO briefing

Attachments: RE: OW AA briefing on CAFOs?; OW CAFO Strategy breifing draft 1 4 2022 added figure.pptx

Marcus, Chelsea and George:

Attached are a few revisions to the ppt as well as en e-mail from Kathy Greenwald re: the OECA slide.

I've made the following changes:

Ex. 5 Deliberative Process (DP)

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

Ex. 6 Personal Privacy (PP) (While working remotely)

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Monday, January 3, 2022 5:27 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>

Cc: Molloy, Jennifer <molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>; Eddy, Elizabeth <Eddy.Elizabeth@epa.gov>; Lynch, Marissa <Lynch.Marissa@epa.gov>; Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>

Subject: Revised CAFO briefing

Chris,

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Attached is a CLEAN version and a version with your comments and my responses. In the non-CLEAN version, you can review responses to your commentson the prior version and the deleted slides are still included at the end so you can see what was deleted. It might be easier to just review the CLEAN version.

This version was reviewed closely by Jenny, George, Chelsea and I. Sorry for the delay getting this to you but this was the first day in about a month that the CAFO team was all together.

Marcus Zobrist | Chief, Industrial Branch

U.S. Environmental Protection Agency

Office of Wastewater Management | Water Permits Division

Office: (202) 564-8311 Mobile: Ex. 6 Personal Privacy (PP)

Zobrist.Marcus@epa.gov

This e-mail is intended solely for the use of the individual or entity to whom it is addressed and its content shall be regarded as confidential unless explicitly stated otherwise. If you have received this e-mail by mistake, please notify the sender immediately by e-mail and delete this e-mail from your system.

From: Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]

Sent: 1/4/2022 2:54:47 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]
CC: Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]

Subject: RE: OW AA briefing on CAFOs?

Attachments: OW CAFO Strategy breifing draft 1 4 2022 CLEAN.pptx

| Hi | | e | n | n | V. |
|----|---|---|---|---|----|
| | J | ~ | | | ٧. |

| Thanks for the update and for sending the lat | test draft of OWM's ppt. The enforcement slide in Appendix A has be | een |
|---|---|----------|
| shorten and now makes a statement about | Ex. 5 Deliberative Process (DP) | . Here's |
| what I provided to you: | | |

Ex. 5 Deliberative Process (DP)

| If the above bullets are too long to include on the slide, we could shorten it. For example, we could sho | orten the first |
|---|-----------------|
| bullet to say Ex. 5 Deliberative Process (DP) | |
| Ex. 5 Deliberative Process (DP) | |
| Ex. 5 Deliberative Process (DP) | |
| (Including you in this email, Kristin, in case you have other suggestions!) | |
| Please give me a call if you'd like to discuss. | |
| Thanks, Kathy | |

From: Molloy, Jennifer < molloy.jennifer@epa.gov>

Sent: Tuesday, January 4, 2022 9:01 AM

Ex. 6 Personal Privacy (PP) (Cell)

To: Greenwald, Kathryn < Greenwald. Kathryn@epa.gov>

Subject: RE: OW AA briefing on CAFOs?

Kathy:

Thanks. Happy holidays back to you too. Hope yours went well.

This meeting with Radhika was tentatively scheduled for January 20, but it's my understanding it's about to be rescheduled to accommodate someone else's calendar. Hopefully not too far off. We have a pre-brief with Andrew on Thursday, which is just OWM. It's my understanding he wants to follow that up with another "pre-brief" to include other offices (you guys, OST and OGC). I'll check on that one and make sure you're on the invite. Let me know if you have managers who want to be included.

Also attached is the current version of the briefing ppt. There have been so many cooks in the kitchen on this since you last saw it, so let me know if there's any misrepresentation of OECA [Ex.5 Deliberative Process (DP)] so that we can correct them.

Thanks, Jenny

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
<u>Water Permits</u> Division

Ex. 6 Personal Privacy (PP) (while working remotely)

From: Greenwald, Kathryn < Greenwald. Kathryn@epa.gov>

Sent: Monday, January 3, 2022 1:13 PM

To: Molloy, Jennifer < molloy.jennifer@epa.gov>

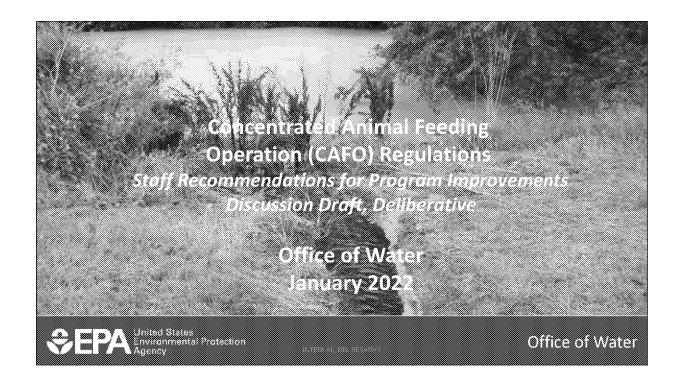
Subject: OW AA briefing on CAFOs?

Hi Jenny,

First of all, happy New Year to you and your family!

Do you still anticipate briefing your AA on CAFOs? If so, any update on the timing of it?

Thanks, Kathy

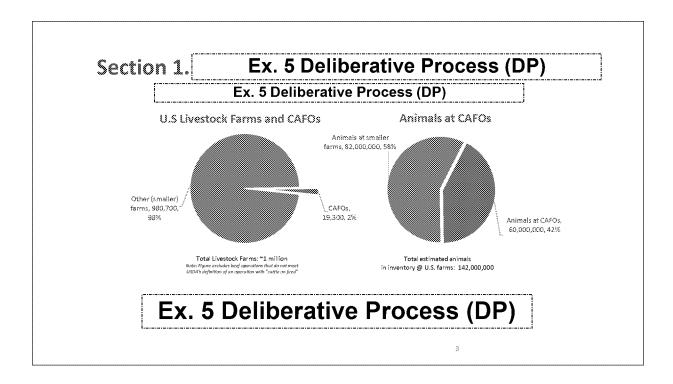


Briefing Overview

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- *Section 3.
- *Section 4.

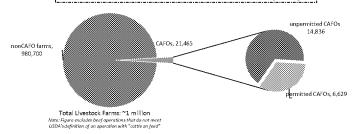
Ex. 5 Deliberative Process (DP)





Livestock Farms, CAFOs, and Permitted CAFOs

Ex. 5 Deliberative Process (DP)



Data Sources: 2012 USDA Census of Agriculture; EPA NP DES CAFO 2020 Status Report

• Approximately 30 % of CAFOs have federal NPDES permits

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Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are <u>not</u> covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)

* <u>There are four petitions</u> (3 water, **1** air) before the Agency to revise CAFO regulations **Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) See** Appendix B.



Section 2.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria
 including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)

 USDA estimates that appropriate nutrient management practices are not followed for 92% of manured acres.

Ex. 5 Deliberative Process (DP)



Section 2.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Odors are one of the most common complaints associated with CAFOs.

Ex. 5 Deliberative Process (DP)

- Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - * EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.



Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

INTERNAL, DELIBERATIVE

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



Office of Water

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Ex. 5 Deliberative Process (DP)



Office of Mater

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Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Mater

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Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

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Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

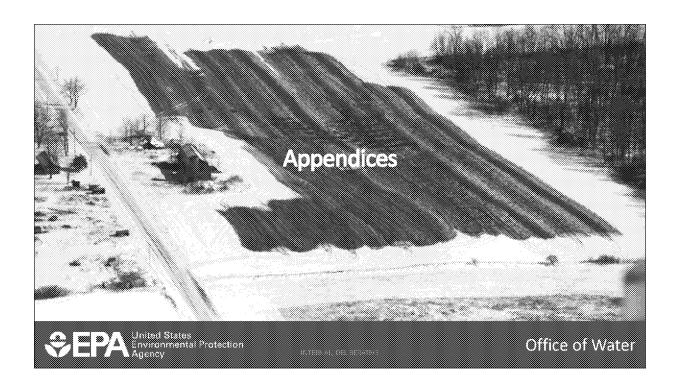


Office of Water

17

Ex. 5 Deliberative Process (DP)





Appendix A. Ex. 5 Deliberative Process (DP)

Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches were
 tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted
 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented in receiving waters.
- Since FY19, CAFOs have been returned to the NPDES core program.

Ex. 5 Deliberative Process (DP)



Office of Water

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Appendix B. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Appendix C. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Appendix C. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



All slides after this suggest to be deleted

INTERNAL, DELIBERATIVE

Ex. 5 Deliberative Process (DP)

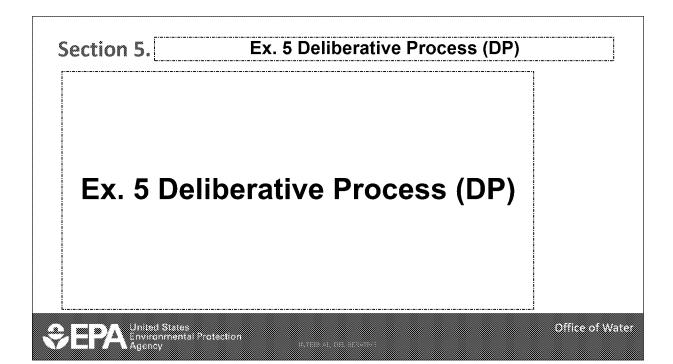
Ex. 5 Deliberative Process (DP)

Office of Water

Section 4. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

INTERNAL, DELIBERATIVE



Section 4 Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Section 4. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

 Section 4. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water

Message

Durant, Chelsea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP From:

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5C90F2C4DBEE42F8A0838203234C6611-DURANT, CHE]

Sent: 11/29/2021 8:53:00 PM

Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Shenk, Kelly [shenk.kelly@epa.gov] To:

Subject: RE: Talking Points for AADG meeting tomorrow

<!--[if Ite mso 15 || CheckWebRef]-->

Durant, Chelsea has shared a OneDrive for Business file with you. To view it, click the link below.



🏿 TPs for Various Topics.docx

<!--[endif]-->

Very good—I've created a word document, with these included.

Chelsea

From: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Sent: Monday, November 29, 2021 3:43 PM

To: Durant, Chelsea <durant.chelsea@epa.gov>; Shenk, Kelly <shenk.kelly@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Here are talking points on CAFO petitions and PFAS:

CAFO Petitions:

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
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- Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.

Status:

- All petitions are still pending.
- The ELG petition is in Court appointed mediation at this time.
- Not sure of the status of the petition under the Air act.

PFAS:

EPA's PFAS Strategic Roadmap issued on October 18th

EPA's approach to PFAS is focused on three central directives:

- Research. Invest in research, development, and innovation to increase understanding of PFAS exposures and toxicities, human health and ecological effects, and effective interventions that incorporate the best available science.
- Restrict. Pursue a comprehensive approach to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment.

• Remediate. Broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems.

The action plan doesn't specifically address agriculture sources/issues at this time.

From: Lopez-Carbo, Maria < Lopez-Carbo.Maria@epa.gov>

Sent: Monday, November 29, 2021 2:59 PM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Kloss, Christopher <Kloss.Christopher@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Hi Marcus:

We were on the phone with Andrew and Amelia so we received additional clarification.

Go ahead and add a bullet or two to the topics below that you know about/ that belongs to us (WPD/OWM) and we will send those to Andrew.

So they will not be sent to OW which means you can just provide some quick details and nothing to extensive/detailed.

Thanks

Maria

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Sent: Monday, November 29, 2021 2:41 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>

Cc: Durant, Chelsea <<u>durant.chelsea@epa.gov</u>>; Shenk, Kelly <<u>shenk.kelly@epa.gov</u>>; Lopez-Carbo, Maria <<u>Lopez-</u>

<u>Carbo.Maria@epa.gov</u>>

Subject: FW: Talking Points for AADG meeting tomorrow

Chris,

Just checking – based on Andrew's note of a couple minutes after Amelia's, I assume we are not writing talking points for these. Many of these topics are not ours anyways. Andrew agreed with Kelly that if these topics came up that we would do a deeper dive webinar with key EPA folks to address.

From: Nguyen, Amelia <nguyen.amelia@epa.gov>

Sent: Monday, November 29, 2021 11:59 AM

To: Shenk, Kelly <<u>shenk.kelly@epa.gov</u>>; Durant, Chelsea <<u>durant.chelsea@epa.gov</u>>; Eddy, Elizabeth

<Eddy.Elizabeth@epa.gov>

Cc: Sylvester, Frank < Sylvester. Frank. J@epa.gov >; Zobrist, Marcus < Zobrist. Marcus@epa.gov >; Kloss, Christopher

< Kloss. Christopher@epa.gov >; Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov >; Sawyers, Andrew

<<u>Sawyers.Andrew@epa.gov</u>>

Subject: RE: Talking Points for AADG meeting tomorrow

Thank you, Kelly. Could the AADG team help us develop some anticipated Q&As on the OW priorities from the Talking Points document (also pasted below) to help Radhika prep for the meeting tomorrow please?

•



Office of Wastewater Management Ex. 6 Personal Privacy (PP) nguyen.amelia@epa.gov

Pronouns: She/Her/Hers

From: Shenk, Kelly <shenk.kelly@epa.gov> Sent: Monday, November 29, 2021 11:51 AM

To: Sawyers, Andrew Sawyers.Andrew@epa.gov; Kloss, Christopher Kloss, Christopher@epa.gov; Durant, Chelsea <durant.chelsea@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Cc: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sylvester, Frank <Sylvester.Frank.J@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Hi Andrew, I think it would be most appropriate for OW to give high level remarks that hit on the top 3 Agency priorities as they pertain to water and agriculture - infrastructure, environmental justice, WOTUS - for example (the infrastructure TP's are likely too detailed for this audience). The list of topics that AADG participants may bring up (highlighted in yellow below) is just an FYI for Radhika, but don't need to be addressed directly. If/when they come up, we can agree to set up 1-hour webinars with the key EPA leads to dive deeper into those issues this coming year.

Kelly Shenk, Agriculture Advisor **EPA Mid-Atlantic Region** shenk.kelly@epa.gov Ex. 6 Personal Privacy (PP)

From: Sawyers, Andrew < Sawyers. Andrew@epa.gov>

Sent: Monday, November 29, 2021 10:58 AM

To: Kloss, Christopher < Kloss, Christopher@epa.gov>; Durant, Chelsea < durant.chelsea@epa.gov>; Shenk, Kelly <shenk.kelly@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Cc: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sylvester, Frank <<u>Sylvester.Frank.J@epa.gov</u>>

Subject: FW: Talking Points for AADG meeting tomorrow

Importance: High

FYI - I am wondering if this audience is ready for the details shared by Elizabeth - what do you all think?

From: Cisar, Elizabeth < <u>Cisar.Elizabeth@epa.gov</u>> Sent: Monday, November 29, 2021 10:40 AM

To: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Risley, David

<Risley.David@epa.gov>

Cc: Mathews, Cheyenne < <u>Mathews.Cheyenne@epa.gov</u>> **Subject:** RE: Talking Points for AADG meeting tomorrow

Importance: High

Amelia and Andrew:

Thank you.

The document does not include talking points for OW priorities or for a list of issues that are described as likely to come up.

If Radhika is expected to speak to those issues, she would need talking points for them. Do we have a written Q&A so there is an OWM response to these points?

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David, do you think Radhika is more likely to want to talk about the BIL? If so, we can use BIL talking points that have already been developed. Alternatively, we could use the talking points on the BIL from the beginning of Andrew's talking points (pasted below). Then, Andrew could build on those, and go more in depth into OWM priorities.

Ex. 5 Deliberative Process (DP)

Elizabeth Cisar

Cisar.Elizabeth@epa.gov

Phone: (202)-564-4382; Ex. 6 Personal Privacy (PP)

From: Nguyen, Amelia <nguyen.amelia@epa.gov>
Sent: Monday, November 29, 2021 9:00 AM

To: Sawyers, Andrew <<u>Sawyers.Andrew@epa.gov</u>>; Cisar, Elizabeth <<u>Cisar.Elizabeth@epa.gov</u>>; Risley, David <Risley.David@epa.gov>

Cc: Mathews, Cheyenne < <u>Mathews.Cheyenne@epa.gov</u>> **Subject:** RE: Talking Points for AADG meeting tomorrow

Good morning everyone,

Attached are our draft TP suggestions for Radhika's and Andrew's presentations during the AADG meeting tomorrow. I think Cheyenne (CC'd) is editing Radhika's TPs to highlight 1) our partnerships with Ag, 2) WOTUS, and 3) the nutrients memo.

Sincerely, Amelia

Amelia Nguyen, Ph.D.
Acting Special Assistant
Office of Wastewater Management
Ex. 6 Personal Privacy (PP)

Tigovernamenate epagov Pronouns: She/Her/Hers

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To: Risley, David Risley, David@epa.gov>; Sawyers, Andrew Sawyers.Andrew@epa.gov>

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Hi David and Andrew:

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I wanted to check in on the status of talking points for the AADG meeting tomorrow. Radhika asked me to review the talking points before they are sent to her.

Thanks!

Elizabeth Cisar (she, her)
Senior Advisor, Office of Water
US Environmental Protection Agency

Cisar. Elizabeth@epa.gov

Phone: (202)-564-4382; Cell: Ex. 6 Personal Privacy (PP)

Message

From: Durant, Chelsea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5C90F2C4DBEE42F8A0838203234C6611-DURANT, CHE]

Sent: 11/29/2021 9:40:44 PM

To: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Kloss, Christopher [Kloss, Christopher@epa.gov]

CC: Shenk, Kelly [shenk.kelly@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: RE: Talking Points for AADG meeting tomorrow

Attachments: TPs for Various Topics.docx

Maria,

Here are some quick details about each of the items on the heavily circulated topics list. Please let us know of anything further is needed. Thanks!

Chelsea

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Sent: Monday, November 29, 2021 2:59 PM

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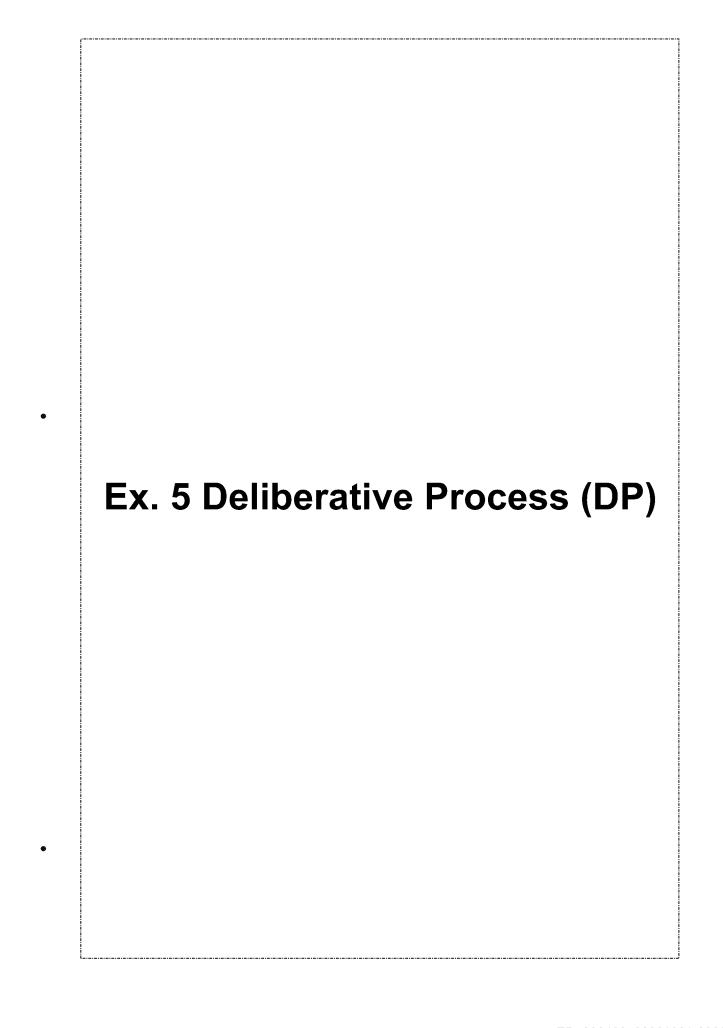
Elizabeth Cisar (she, her)
Senior Advisor, Office of Water
US Environmental Protection Agency

Cisar.Elizabeth@epa.gov

Phone: (202)-564-4382; Cell: | Ex. 6 Personal Privacy (PP)

Topics that are likely to come up from ag sector participants during AADG Meeting November 30, 2021

| NOTE: If/when any of the topics below come up, we can agree to set up 1-hour webinars with he key EPA leads to dive deeper into specific issues in this coming year. | |
|--|--|
| | |
| Ex. 5 Deliberative Process (DP) | |
| | |
| | |



Message

From: Durant, Chelsea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5C90F2C4DBEE42F8A0838203234C6611-DURANT, CHE]

Sent: 8/19/2021 3:55:28 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]

Subject: RE: CAFO OW Briefing planning

That is correct. There was another participant (I can't recall his name currently) that took notes during the meeting and offered other to contribute to that document. I think it can be accessed from the chat on the Team site.

Chelsea

From: Molloy, Jennifer <molloy.jennifer@epa.gov>

Sent: Thursday, August 19, 2021 11:51 AM **To:** Durant, Chelsea < durant.chelsea@epa.gov> **Subject:** FW: CAFO OW Briefing planning

As I recall we didn't say we'd compile notes from the meeting, just that we'd take the input from the meeting to start drafting a briefing outline, right?

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

Ex.6 Personal Privacy (PP) (While working remotely)

From: Gluckman, Matthew <gluckman.matthew@epa.gov>

Sent: Thursday, August 19, 2021 11:31 AM

To: Molloy, Jennifer < molloy.jennifer@epa.gov >

Subject: RE: CAFO OW Briefing planning

Hi Jenny- Thanks for the call last week- those of us in R5 are pleased to see the focus on efforts to improve the CAFO program. We're having a follow up discussion with others in the region next Tuesday, Aug. 24 pm. My understanding is that notes were being prepared from the 8/10 call, and would perhaps be put in the folder provided to meeting participants. Do you anticipate the notes would be available prior to our internal session?

Thanks, Matt

Matt Gluckman Chief, NPDES Section 2 Permits Branch U.S. EPA Region 5, WN-15J 77 W. Jackson Blvd Chicago, Illinois 60604 312-886-6089

----Original Appointment----

From: Molloy, Jennifer < molloy.jennifer@epa.gov>

Sent: Tuesday, August 10, 2021 8:00 AM

To: Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove, Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista; Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Cc: Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Subject: CAFO OW Briefing planning

When: Tuesday, August 10, 2021 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

Microsoft Teams meeting

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Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP)

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| use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and |
| eDiscovery activities. |
| |
| Learn More Meeting options |

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/9/2021 6:28:50 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

[Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov];

Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional

Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

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Microsoft Teams meeting

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Ex. 6 Personal Privacy (PP) United States, Washington DC Phone Conference ID: Ex. 6 Personal Privacy (PP)

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Message

Molloy, Jennifer [molloy.jennifer@epa.gov] From:

Sent: 7/19/2021 1:20:51 PM

To: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Utting, George [Utting.George@epa.gov]; Zobrist, Marcus

[Zobrist.Marcus@epa.gov]; Kloss, Christopher [Kloss.Christopher@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: RE: Program Plan 14/CAFO Briefing for Radhika Next Week

Attachments: Revised Briefing Paper on 304(m)-CAFO Litigation - 7.16.2021.docx

Maria:

Just read through the revised version. If you want to discuss we can. I don't see any significant changes from the version we discussed with OGC and OST a couple of weeks ago. From the standpoint of OWM, these seem to be the take home points:

Most of this is in OST/EAD's wheelhouse as it directly pertains to their Plan 14 document/process. They

Ex. 5 Deliberative Process (DP)

The reason we should stay involved in this has more to do with the bigger picture of how OW wants to respond

Ex. 5 Deliberative Process (DP)

George is out today. Let me know if you need anything else from us.

Jenny

Jenny Molloy U.S. Environmental Protection Agency **Water Permits Division** Ex. 6 Personal Privacy (PP) / hile working remotely) (she/her/hers)

From: Molloy, Jennifer

Sent: Monday, July 19, 2021 7:20 AM

To: Lopez-Carbo, Maria <Lopez-Carbo.Maria@epa.gov>; Utting, George <Utting.George@epa.gov>; Zobrist, Marcus

<Zobrist.Marcus@epa.gov>; Kloss, Christopher <Kloss.Christopher@epa.gov>

Subject: RE: Program Plan 14/CAFO Briefing for Radhika Next Week

I attached a copy of the document, current as of 7:15 a.m. on 7/19.

Jenny Molloy

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) hile working remotely)

(she/her/hers)

From: Lopez-Carbo, Maria < Lopez-Carbo.Maria@epa.gov>

Sent: Friday, July 16, 2021 3:01 PM

To: Utting, George < Utting.George@epa.gov">Utting.George@epa.gov; Zobrist, Marcus < Zobrist.Marcus@epa.gov; Molloy, Jennifer

<molloy.jennifer@epa.gov>

Cc: Pickrel, Jan < Pickrel Jan@epa.gov>

Subject: FW: Program Plan 14/CAFO Briefing for Radhika Next Week

Hi All.

I know you have all been out but if we can find a time on Monday to have a quick check in on this and get an actual copy (we can't open the sharepoint site)

That would be great.

Marcus- you could also give us a quick update during the 10am?

Whatever works.

Thanks Maria

From: Sawyers, Andrew < Sawyers. Andrew@epa.gov >

Sent: Friday, July 16, 2021 11:35 AM

To: Kloss, Christopher <<u>Kloss.Christopher@epa.gov</u>>; Lopez-Carbo, Maria <<u>Lopez-Carbo.Maria@epa.gov</u>> Cc: Miller, Wynne <<u>Miller.Wynne@epa.gov</u>>; Sylvester, Frank <<u>Sylvester.Frank.J@epa.gov</u>>; Nguyen, Amelia

<nguyen.amelia@epa.gov>

Subject: FW: Program Plan 14/CAFO Briefing for Radhika Next Week

Hello Chris and Maria, what do you all think?

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Friday, July 16, 2021 9:13 AM

To: Scozzafava, MichaelE <<u>Scozzafava.MichaelE@epa.gov</u>>; Sawyers, Andrew <<u>Sawyers.Andrew@epa.gov</u>>; Zobrist, Marcus <<u>Zobrist.Marcus@epa.gov</u>>; Damico, Brian <<u>Damico.Brian@epa.gov</u>>; Flanders, Phillip

<Flanders.Phillip@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>

Cc: Levine, MaryEllen </evine.maryellen@epa.gov>; Kupchan, Simma </e>

Subject: Program Plan 14/CAFO Briefing for Radhika Next Week

Hi All,

A briefing for Radhika on options for proceeding in *FWW v. EPA*, the litigation challenging Program Plan 14's statements regarding CAFOs, has been scheduled for Wednesday, July 21 from 2:45 – 3:30pm. The purpose of the briefing is to discuss and hopefully decide how to proceed in this litigation. I added only the managers names to the meeting invite, but <u>please forward the invite</u> to anyone on your team who you think should attend the meeting (I wasn't sure exactly who should attend and didn't want to exclude anyone).

Attached please find a draft briefing paper for the meeting. The attached paper is a streamlined version of the paper we used to brief Deborah a couple of weeks ago and Dimple earlier this week. I did not include Deborah and Rob on this email but if they need to review the paper, please feel free to forward the link to them and anyone else you'd like to have review it. Please provide any edits by 2pm Monday, July 19. I'm sorry for the short turnaround but I've been asked to send the paper to Janita two days before the meeting.

Thank you for all of your help on this over the last few weeks.

Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 11/29/2021 9:27:03 PM

To: Shenk, Kelly [shenk.kelly@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

Subject: RE: Talking Points for AADG meeting tomorrow

Great job indeed.

Chelsea – these look good, please send to Maria when ready. **Ex. 6 Personal** be available after 4:30.

Ex. 6 Personal Privacy (PP) and won't

From: Shenk, Kelly <shenk.kelly@epa.gov> Sent: Monday, November 29, 2021 4:15 PM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

I added my input to Chelsea's shared file. Great work team! And Rod Snyder is looking forward to attending the meeting. Robin Dunkins will try to attend most of it in case air-related questions come up.

Kelly Shenk, Agriculture Advisor EPA Mid-Atlantic Region shenk.kelly@epa.gov (410) 267-5728

From: Zobrist, Marcus <<u>Zobrist.Marcus@epa.gov</u>>
Sent: Monday, November 29, 2021 3:43 PM

To: Durant, Chelsea <durant.chelsea@epa.gov>; Shenk, Kelly <shenk.kelly@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Here are talking points on CAFO petitions and PFAS:

CAFO Petitions:

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.

Status:

- All petitions are still pending.
- The ELG petition is in Court appointed mediation at this time.
- Not sure of the status of the petition under the Air act.

PFAS:

EPA's PFAS Strategic Roadmap issued on October 18th

EPA's approach to PFAS is focused on three central directives:

- Research. Invest in research, development, and innovation to increase understanding of PFAS exposures and toxicities, human health and ecological effects, and effective interventions that incorporate the best available science.
- Restrict. Pursue a comprehensive approach to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment.
- Remediate. Broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems.

The action plan doesn't specifically address agriculture sources/issues at this time.

From: Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov>

Sent: Monday, November 29, 2021 2:59 PM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Kloss, Christopher <Kloss.Christopher@epa.gov>

Cc: Durant, Chelsea <durant.chelsea@epa.gov>; Shenk, Kelly <shenk.kelly@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Hi Marcus:

We were on the phone with Andrew and Amelia so we received additional clarification.

Go ahead and add a bullet or two to the topics below that you know about/ that belongs to us (WPD/OWM) and we will send those to Andrew.

So they will not be sent to OW which means you can just provide some quick details and nothing to extensive/detailed.

Thanks

Maria

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Monday, November 29, 2021 2:41 PM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>

Cc: Durant, Chelsea < durant.chelsea@epa.gov>; Shenk, Kelly < shenk.kelly@epa.gov>; Lopez-Carbo, Maria < Lopez-

Carbo.Maria@epa.gov>

Subject: FW: Talking Points for AADG meeting tomorrow

Chris,

Just checking – based on Andrew's note of a couple minutes after Amelia's, I assume we are not writing talking points for these. Many of these topics are not ours anyways. Andrew agreed with Kelly that if these topics came up that we would do a deeper dive webinar with key EPA folks to address.

From: Nguyen, Amelia <nguyen.amelia@epa.gov>

Sent: Monday, November 29, 2021 11:59 AM

To: Shenk, Kelly <shenk.kelly@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>; Eddy, Elizabeth

<Eddy.Elizabeth@epa.gov>

Cc: Sylvester, Frank < Sylvester. Frank L@epa.gov >; Zobrist, Marcus < Zobrist. Marcus@epa.gov >; Kloss, Christopher

<<u>Kloss.Christopher@epa.gov</u>>; Lopez-Carbo, Maria <<u>Lopez-Carbo.Maria@epa.gov</u>>; Sawyers, Andrew

<Sawyers.Andrew@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Thank you, Kelly. Could the AADG team help us develop some anticipated Q&As on the OW priorities from the Talking Points document (also pasted below) to help Radhika prep for the meeting tomorrow please?

Ex. 5 Deliberative Process (DP)

Sincerely, Amelia

Amelia Nguyen, Ph.D.
Acting Special Assistant
Office of Wastewater Management
Cell: 202-381-8482
nguyen.amelia@epa.gov
Pronouns: She/Her/Hers

From: Shenk, Kelly <<u>shenk.kelly@epa.gov</u>>
Sent: Monday, November 29, 2021 11:51 AM

To: Sawyers, Andrew <<u>Sawyers.Andrew@epa.gov</u>>; Kloss, Christopher <<u>Kloss.Christopher@epa.gov</u>>; Durant, Chelsea <durant.chelsea@epa.gov>; **Zobrist**, Marcus <<u>Zobrist.Marcus@epa.gov</u>>

Cc: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sylvester, Frank <Sylvester.Frank.J@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Hi Andrew, I think it would be most appropriate for OW to give high level remarks that hit on the top 3 Agency priorities as they pertain to water and agriculture – infrastructure, environmental justice, WOTUS – for example (the infrastructure TP's are likely too detailed for this audience). The list of topics that AADG participants may bring up (highlighted in yellow below) is just an FYI for Radhika, but don't need to be addressed directly. If/when they come up, we can agree to set up 1-hour webinars with the key EPA leads to dive deeper into those issues this coming year.

Kelly Shenk, Agriculture Advisor EPA Mid-Atlantic Region shenk.kelly@epa.gov (410) 267-5728 From: Sawyers, Andrew <Sawyers.Andrew@epa.gov>

Sent: Monday, November 29, 2021 10:58 AM

To: Kloss, Christopher < Kloss. Christopher@epa.gov>; Durant, Chelsea < durant.chelsea@epa.gov>; Shenk, Kelly

<shenk.kelly@epa.gov>; Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Cc: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sylvester, Frank <5ylvester.Frank.J@epa.gov>

Subject: FW: Talking Points for AADG meeting tomorrow

Importance: High

FYI – I am wondering if this audience is ready for the details shared by Elizabeth – what do you all think?

From: Cisar, Elizabeth < <u>Cisar, Elizabeth@epa.gov</u>> Sent: Monday, November 29, 2021 10:40 AM

To: Nguyen, Amelia <nguyen.amelia@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Risley, David

<Risley.David@epa.gov>

Cc: Mathews, Cheyenne < <u>Mathews.Cheyenne@epa.gov</u>> **Subject:** RE: Talking Points for AADG meeting tomorrow

Importance: High

Amelia and Andrew:

Thank you.

The document does not include talking points for OW priorities or for a list of issues that are described as likely to come up.

If Radhika is expected to speak to those issues, she would need talking points for them. Do we have a written Q&A so there is an OWM response to these points?

Ex. 5 Deliberative Process (DP)

David, do you think Radhika is more likely to want to talk about the BIL? If so, we can use BIL talking points that have already been developed. Alternatively, we could use the talking points on the BIL from the beginning of Andrew's talking points (pasted below). Then, Andrew could build on those, and go more in depth into OWM priorities.



Elizabeth Cisar

Cisar.Elizabeth@epa.gov

Phone: (202)-564-4382; (Ex. 6 Personal Privacy (PP)

From: Nguyen, Amelia <nguyen.amelia@epa.gov>
Sent: Monday, November 29, 2021 9:00 AM

 $\textbf{To: Sawyers, Andrew@epa.gov}; \ Cisar, \ Elizabeth < \underline{Cisar.Elizabeth@epa.gov}; \ Risley, \ David = \underline{Cisar.Elizabeth@epa.gov}; \ Risley, \ Risle$

<Risley.David@epa.gov>

Cc: Mathews, Cheyenne < <u>Mathews.Cheyenne@epa.gov</u>> **Subject:** RE: Talking Points for AADG meeting tomorrow

Good morning everyone,

Attached are our draft TP suggestions for Radhika's and Andrew's presentations during the AADG meeting tomorrow. I think Cheyenne (CC'd) is editing Radhika's TPs to highlight 1) our partnerships with Ag, 2) WOTUS, and 3) the nutrients memo.

Sincerely, Amelia

Amelia Nguyen, Ph.D.
Acting Special Assistant
Office.of. Wastewater. Management
Ex. 6 Personal Privacy (PP)
Inguyen.amenagepa.gov

Pronouns: She/Her/Hers

From: Sawyers, Andrew <Sawyers.Andrew@epa.gov>

Sent: Monday, November 29, 2021 9:43 AM

To: Cisar, Elizabeth < Cisar. Elizabeth@epa.gov>; Risley, David < Risley. David@epa.gov>

Cc: Nguyen, Amelia < nguyen.amelia@epa.gov>

Subject: RE: Talking Points for AADG meeting tomorrow

Hello Elizabeth, I think we developed a few last week and shared. Hello Amelia, can you please resend the entire TPs including mine to all of us. I'll do a parallel review.

From: Cisar, Elizabeth < <u>Cisar, Elizabeth@epa.gov</u>> Sent: Monday, November 29, 2021 8:39 AM

To: Risley, David Risley.David@epa.gov; Sawyers, Andrew Sawyers.Andrew@epa.gov>

Subject: Talking Points for AADG meeting tomorrow

Hi David and Andrew:

I hope each of you had a great Thanksgiving.

I wanted to check in on the status of talking points for the AADG meeting tomorrow. Radhika asked me to review the talking points before they are sent to her.

Thanks!

Elizabeth Cisar (she, her) Senior Advisor, Office of Water US Environmental Protection Agency

Cisar.Elizabeth@epa.gov

Phone: (202)-564-4382; Ex. 6 Personal Privacy (PP)

Appendix A for Petitions to Revise CAFO Regulations

I. Chart detailing the Issues raised in the 2017 Food & Water Watch Petition:

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberativ | e Process (DP) |
|---|--|--------------------|---------------------------------|---------------------------------|
| I. EPA'S CAFO REGULATIONS MUST ENSURE THAT ALL DISCHARGING CAFOS OBTAIN NPDES PERMITS | | | | |
| 1. EPA should establish an evidentiary presumption that certain CAFOs discharge and are either subject to NPDES permitting or must rebut the presumption by demonstrating they do not discharge | - EPA Has Clear Authority to Establish a Presumption that Certain CAFOs Discharge - EPA Has Sufficient Evidence to Support a Presumption that CAFOs with Certain Characteristics Discharge Land application (dry weather discharges) Production area | OWM OGC OECA | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| 2. EPA should revise its interpretation of the agricultural stormwater exemption such that no discharges resulting from CAFO activities are exempt as non-point source pollution | - EPA's Interpretation of the Ag SW Exemption inadequate - EPA Has Clear Authority to Revise its Interpretation - The Language and History of the Statute | OGC OWM | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
|---|---|---------------------------|---------------------------------|---------------------------------|
| 3. EPA must ensure that integrators who meet the CWA definition of owner or operator are co-permitted with contract producers, as the statute has always required | EPA has already established that many of these corporate entities are CWA operators, but it must now clarify by regulation which entities meet the definition of an operator and are required to obtain NPDES permits | OWM OECA | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| 4. EPA should revise certain definitions in the CAFO regulations | A. "Production Area" - "ensure that all areas associated with the CAFO facility are subject to the CAFO ELGs" and that discharges from the production area are not | OWM OGC OST | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | eligible for the ag stormwater exemption. B. Revise or Eliminate the "Medium CAFO" Category three-tiered system exempts a large number of operations approaching the Large CAFO size threshold | OWM OGC OECA OST | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | C. EPA Should Impose Meaningful Limits on States' Discretion in Designating CAFOs | OWM OGC OECA | | Ex. 5 Deliberative Process (DP) |

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
|--|--|---------------------------|---------------------------------|---------------------------------|
| II. EPA MUST STRENGTHEN CAFO NPDES PERMITS TO ADEQUATELY PROTECT WATER QUALITY | | | | Ex. 5 Deliberative Process (DP) |
| EPA should revise the requirements applicable to all CAFOs to ensure compliance with the CWA and permit terms | A. EPA must require water quality monitoring in CAFO NPDES permits | OWM OGC OST OECA | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | | | | |
| | B. EPA Must Strengthen Annual Reporting Requirements | OWM OGC | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| 2. EPA should revise the CAFO ELGs to address additional CAFO pollutants of concern, prohibit practices known to harm water quality. | | | | Ex. 5 Deliberative Process (DP) |

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
|---------------------------------|--|-------------------|---------------------------------|---------------------------------|
| | | | | Ex. 5 Deliberative Process (DP) |
| | A. The CAFO ELGs Should Apply to All CAFOs | OST OGC | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | B. EPA Must Establish Application Disclosure requirements, BAT and NSPS Limits, and Monitoring Requirements for Additional CAFO Pollutants of Concern — extend application requirements, ELGs, and | OST OWM OGC | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | permit limits to include other pollutants of concern | | | |
| | C. The CAFO ELGs' NMP Requirements Must Prioritize Protecting Water Quality EPA must establish stronger federal requirements to minimize harmful runoff | OST OGC OWM | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
|---------------------------------|--|---------------------------|---------------------------------|---------------------------------|
| | D. Technical Standards Must Prohibit Practices Known to Harm Water Quality – | OST OGC OWM OECA | | |
| | (1) Manure Storage in Unlined and Inadequately Lined Lagoons and Impoundments | | | |
| | (2) Ventilation of Pollutants near Waters or Conduits to Waters of the U.S air deposition | | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | (3) Application on Frozen, Saturated, or Snow- Covered Ground EPA guidance inadequate | | | |
| | (4) Spray Irrigation of Manure | | | |

| Major issues raised in petition | Additional points raised in petition | Lead Office | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
|---------------------------------|--|--------------------|---------------------------------|---------------------------------|
| | (5) Manure Application on Steep Slopes | | | |
| | (6) Manure Storage in Exposed Stockpiles | | | |
| | E. State Permitting | OST | Ex. 5 Deliberative Process (DP) | Ex. 5 Deliberative Process (DP) |
| | Programs Cannot Effectively Fill the Gaps Left by the Absence of Strong National Standards | OGC OWM OECA | | |
| | F. EPA's Assumptions Regarding the Frequency of Storm Events Are No Longer Accurate | OST OGC OECA | | |

Ex. 5 Deliberative Process (DP)

Message

From: Kloss, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B69B73BDBCB54D8E95C616B40B8B6F1E-KLOSS, CHRISTOPHER]

Sent: 4/29/2021 7:33:47 PM

To: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Halter, Emily [halter.emily@epa.gov]

Subject: Revised CAFO Briefing

Attachments: CAFO Briefing Reg Appendix April 29 2021 cjk.docx; CAFO Briefing April 29 2021 cjk.docx

Do you guys mind giving this a quick look before I send it to Andrew? The changes are that Ex. 5 Deliberative Process (DP) and moved the reg/legal history to the attached appendix to keep us on the page count. I would have liked this to be shorter but consolidated/reorganized rather than cut. Thx.

Chris Kloss
Water Permits Division
Office of Wastewater Management
U.S. Environmental Protection Agency
202.564.1438 (o) | Ex. 6 Personal Privacy (PP)

Briefing Memo - CAFOs DRAFT/DELIBERATIVE

BRIEFING MEMO

April 2021

MEMORANDUM FOR THE ASSISTANT ADMINISTRATOR

POC: Andrew Sawyers, OWM, sawyers.andrew@epa.gov

SUBJECT: NPDES Concentrated Animal Feeding Operation (CAFO) Program

- I. **REQUESTING OFFICE:** OWM, Water Permits Division
- II. <u>TIMING:</u> No deadlines.
- **III. PURPOSE:** Provide an overview of the National Pollutant Discharge Elimination System (NPDES) CAFO program.

IV. BACKGROUND AND HISTORY:

- CAFOs are identified as point sources in the Clean Water Act (CWA).
 - The CAFO regulations include beef, dairy, pork, and poultry operations, as well as racetracks.
 - A CAFO is required to have an NPDES permit when the number of livestock meets the definition of a large CAFO (for at least 45 days per year) AND when it discharges to a water of the U.S.¹
 - The regulations cover CAFO production areas (animal confinement, manure storage, raw materials storage, and waste containment) and land application of manure, litter, or process wastewater.
 - The regulations prohibit production area discharges from storage structures (e.g., manure lagoons) except for other than overflows created by from large storms (i.e., storage structures that are designed and operated to contain all wastewater plus the rainfall-from a 25-year, 24-hour rainfall event).

¹ Medium CAFOs may be required to obtain an NPDES permit if they (1) have a manmade conveyance (e.g., ditch/pipe) that carries manure or wastewater to a water of the U.S. or if the animals come into contact with surface water that passes through the confinement area or (2) are designated for permit coverage on a case-by-case basis by the permitting authority. Small CAFOs are only required to obtain an NPDES permit if are designated for permit coverage on a case-by-case basis.

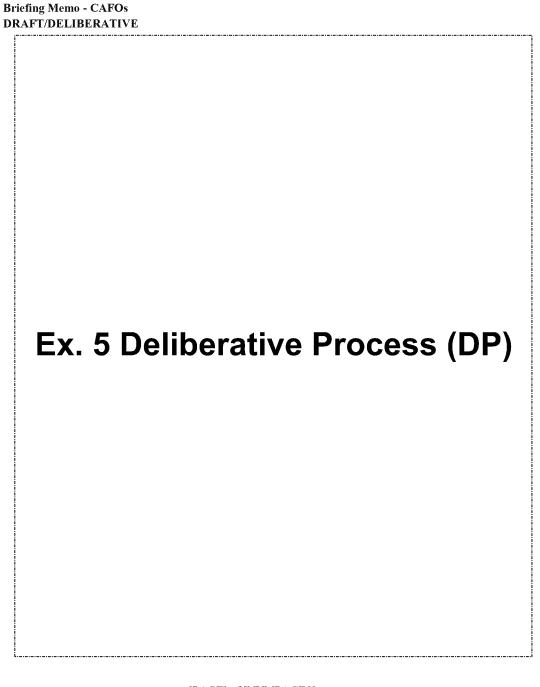
Briefing Memo - CAFOs DRAFT/DELIBERATIVE

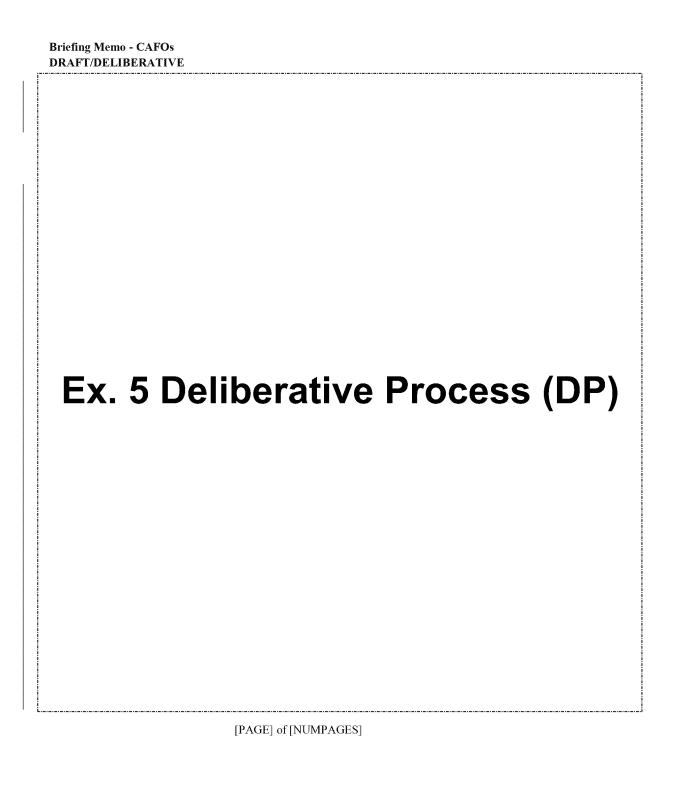
- The regulations prohibit discharges from land application areas except for stormwater-related discharges when manure is applied consistent with a nutrient management plan (NMP).
- EPA first promulgated regulations to address NPDES permitting of CAFOs in the 1970s: offluent guidelines (1974) and NPDES regulations (1976).
 - o These regulations did not address land application.
 - The definition of CAFOs in the 1970 regs included an exclusion that resulted in many CAFOs not having permit coverage.
- In 2003, EPA made substantial changes to both the NPDES permitting regulations
 and the efficient guidelines that changed the definition of a CAFO and added
 requirements for land application and dry litter poultry operations. The 2003
 CAFO rule was challenged by Waterkeeper Alliance and other parties, including
 industry groups, in the Second Circuit Court of Appeals.²
 - The court remanded significant parts of the 2003 rule, holding that all CAFOs do not need to obtain a permit and that nutrient management plan terms are part of CAFO permits and therefore must be made available for public notice.
 - The court upheld the agency's interpretation that stormwater discharges from fields where manure is applied consistent with NMPs (i.e., at rates that crops can absorb) are nonpoint sources not subject to NPDES permitting because of the CWA section 502 "agricultural stormwater" exemption.
- In 2008, EPA issued revisions to address the Waterkeeper remand. The 2008 rule
 was challenged by National Pork Producers Council (NPCC), Natural Resources
 Defense Council (NRDC) and other parties in the Fifth Circuit Court of Appeals.³
 - The Fifth Circuit issued a partial remand, holding that, according to the text of the Clean-Water Act, EPA can only require CAFOs that actually discharge to obtain a permit. NRDC settled out of the NPPC lawsuit in exchange for EPA proposing the CAFO reporting rule in 2011. EPA did not finalize the CAFO reporting rule.
- In 2012, EPA issued a revised rule that replaced the former "duty to apply"
 (requirement that all CAFOs apply for a permit) provision by stating that CAFOs
 may not discharge without an NPDES permit.
- Between 2011 and 2019, the number of permitted CAFOs in the U.S. has
 decreased by roughly 12% (and many others were never permitted at all) while the

³⁻Waterkeeper Alliance et al. v. EVA, 399 F.3d 486 (2d Cir. 2005).

^{*}National Pork Producers Council v. KPA, 635 F.34 738, 756 (5th Cis. 2011).

Briefing Memo - CAFOs DRAFT/DELIBERATIVE number of CAFOs has increased by roughly 12.6%. There are approximately 21,000 CAFOs in the U.S. and about 6,700 (32%) have NPDES coverage. Ex. 5 Deliberative Process (DP) Formatted: Font: (Default) Times New Roman, 14 pt





Ex. 5 Deliberative Process (DP)

EPA's Efforts to Enhance the Program within the Existing Regulatory Framework

- The Animal Agriculture Discussion Group (AADG), established by OWM in 2013, provides a forum for industry to engage with federal partners and permitting authorities to discuss implementation challenges and best practices.
- NRCS and EPA developed nutrient management planning tools and a series of online animal agriculture education modules.
- EPA collaborated with the U.S. Poultry & Egg Association to develop a set of compliance videos. Region 3 also collaborated with U.S. Poultry and Egg on a "What to Expect When You're Inspected" video.
- Nutrient Recycling Challenge: Significant engagement with a wide variety of stakeholders to promote innovative technologies for utilizing manure.
- Provided contractor assistance to states and tribes on discrete projects that aimed to address a particular problem or enhance a particular program.
- Continue to engage with poultry & egg sector on possibilities to simplify NMP template for non-CAFO AFOs.
- State Program Compendiums highlighting noteworthy state program features.
- ACWA-sponsored forums, biennial roundtables, and special topic engagements with state NPDES programs.

VI. NEXT STEPS/UPCOMING DEADLINES:

Current and Pending Issues:

• In 2017, Food & Water Watch (FWW), et al., petitioned EPA to make changes to the CAFO program.

Briefing Memo - CAFOs DRAFT/DELIBERATIVE

| 0 | The petition outlines Ex. 5 Deliberative Process (DP) CAFO program and |
|---|---|
| | suggests Ex. 5 Deliberative Process (DP) |
| | Ex. 5 Deliberative Process (DP) |
| 0 | In 2017, EPA met several times with FWW to discuss their requested changes. |
| 0 | EPA has not formally responded to the petition. Ex. 5 Deliberative Process (DP) |
| | Ex. 5 Deliberative Process (DP) |
| | Ex. 5 Deliberative Process (DP) |
| 0 | EPA is currently responding to a FOIA request from FWW requesting |

- EPA is currently responding to a FOIA request from FWW requesting information on the Agency's efforts to respond to the petition.
- In 2015, a law student at the University of Colorado, petitioned EPA to make changes to the CAFO program. EPA has not formally responded to the petition.
- In 2020, FWW challenged Region 10's Idaho CAFO General Permit in the Ninth Circuit. Oral argument is scheduled for May 6, 2021.
- In 2021, the Chesapeake Bay Foundation sent EPA a letter requesting changes to the CAFO program.
- Region 6 is in the process of reissuing the New Mexico CAFO General Permit.
 Ex. 5 Deliberative Process (DP)
- Ohio Department of Agriculture is seeking NPDES authorization to assume the CAFO permitting program from Ohio EPA.
 - Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

VII. STAKEHOLDER PERSPECTIVES

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

VIII. APPENDICES:

- CAFO Briefing Supplement PowerPoint: additional information, data, and figures
- Regulatory Definitions of CAFOs
- Signed memo to regions 12-8-11: CAFO Program Update after NPPC v. EPA
- Regulatory and Legal History

Message

Zobrist, Marcus [Zobrist.Marcus@epa.gov] From:

10/8/2021 9:15:52 PM Sent:

To: Kloss, Christopher [Kloss.Christopher@epa.gov] CC: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]

Subject: RE: CAFO

Attachments: OW CAFO Strategy draft v2 07Oct.pptx

<!--[if Ite mso 15 || CheckWebRef]-->

Zobrist, Marcus has shared a OneDrive for Business file with you. To view it, click the link below.



OW CAFO Strategy draft v2 07Oct.pptx

<!--[endif]-->

Chris,

Attached is the draft CAFO briefing. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

It was developed with input from OGC (Simma, Mary Ellen, Kirsta), OST (Jesse

and Paul Shriner) and Jenny, George and Chelsea.

Sorry for the delay in getting it to you.

From: Kloss, Christopher < Kloss. Christopher@epa.gov>

Sent: Friday, October 08, 2021 4:44 PM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Cc: Lopez-Carbo, Maria < Lopez-Carbo. Maria@epa.gov>

Subject: CAFO

Marcus,

Can you send whatever you have on CAFOs to Maria and me? Thanks.



Outcomes for Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Office of Water Process (DP)

NPDES CAFO Regulations have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

- · Approximately one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS, and essentially no Small CAFOs are covered under NPDES permits.
- There are four petitions (3 water, 1 air) before the agency to revise CAFO regulations, see Appendix A

¹ See also May OW briefing materials



Office of Water

Section 2.

Ex. 5 Deliberative Process (DP)

CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways².
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)

² 9th C citing 2003 rule



Office of Water

• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia³.
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions⁴.

 $^3\,9^{th}\,C$ citing 2001 proposed rule

4 FPA 2009



Office of Mater

Section 2. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water Exceptions

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



Office of Water

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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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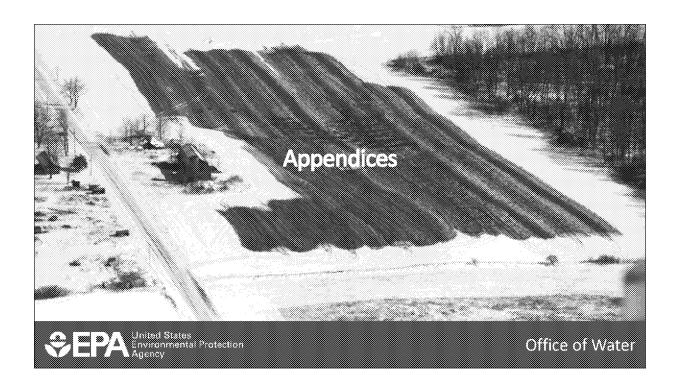
Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Appendix A. CAFO Petitions Currently Pending

There are currently 3 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch v. EPA, No. . (9th CIr.) 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Office of Water

2.1

Nguyen, Amelia [nguyen.amelia@epa.gov] From:

4/30/2021 11:58:12 PM Sent:

To: Kloss, Christopher [Kloss.Christopher@epa.gov] CC: Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov] Subject: FW: 4/30 OWM consolidated email to OW IO

Attachments: Order Requiring Status Report. 20-08).pdf; FOA Order Granting Stay.pdf; CFS Order Granting Stay.pdf; CAFO Briefing

Supplement 02Apr.pptx; Regulatory Definitions of CAFOs.pdf; Signed NPPC memo to regions 12-8-11.pdf; CAFO

Briefing April 302021.docx; Ocean Era Briefing Memo May 3 2021.docx

Hey Chris,

Just to keep you posted... I sent the forwarded email and attachments to OW IO while we wait for the final clearance on the Merrimack briefing materials. I'll check back after a quick dinner. I promise to submit the Merrimack briefing materials to OW IO as soon as I hear from AS+WM.

Sincerely, Amelia

Amelia Nguyen, Ph.D. **Acting Special Assistant** Office of Wastewater Management Ex. 6 Personal Privacy (PP)

nguyen.amelia@epa.gov

From: Nguyen, Amelia

Sent: Friday, April 30, 2021 7:52 PM

To: Tiago, Joseph <Tiago.Joseph@epa.gov>; Braschayko, Kelley

 Kelley draschayko.kelley@epa.gov>; Sabater, Juan

<Sabater.Juan@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>

Cc: Sylvester, Francis < Sylvester. Francis@epa.gov> Subject: 4/30 OWM consolidated email to OW IO

Hi everyone,

For your consideration, listed below are a few items from OWM: Hot Topics for Radhika

2022 Construction General Permit (CGP), OWM:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Briefings

Ocean Era pilot-scale aquaculture permit (5/3 at 12:30-1:15 pm)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

CAFO (5/3 at 12:30-1:15 pm)

Ex. 5 Deliberative Process (DP)

Merrimack Permit (5/3 at 1:15-2pm)

Ex. 5 Deliberative Process (DP)

NPDES Nutrient Controls/Market-Based Approaches (5/20 at 1:1:45 pm)

Ex. 5 Deliberative Process (DP)

Criminal Intent for State Programs (5/7 at 11:30-12 pm)

Ex. 5 Deliberative Process (DP)

Sincerely

Amelia

Amelia Nguyen, Ph.D. Acting Special Assistant Office of Wastewater Management

Ex. 6 Personal Privacy (PP)

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/24/2021 3:07:21 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George

[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

Show Time As: Busy

Required Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs.

Ex. 5 AC/AWP

Ex. 5 AC/AWP

Thank you, Krista

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting

| Or call in (audio only) | - | | |
|--|------------|--------------|---------|
| Ex. 6 Personal Privacy (PP) | United Sta | ites, Washin | gton D0 |
| Phone Conference ID: Ex. 6 Personal Pr | ivacy (PP) | | |
| Find a local number Reset PIN | ! | | |

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

| <u>Learn More Meeting options</u> | | |
|-------------------------------------|--|--|
| | | |

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/2/2021 6:50:21 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

[Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov];

Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting

Or call in (audio only)

Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP)

Find a local number | Reset PIN

Learn More | Meeting options

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 7/2/2021 5:15:35 PM

To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]

CC: Kupchan, Simma [Kupchan.Simma@epa.gov]

Subject: 304(m)/CAFO Litigation Follow Up

Attachments: CAFO Petition - Response Options.docx; Final Program Plan 14 - Jan 2021.pdf; Our Childrens Earth v US EPA.pdf

<!--[if Ite mso 15 || CheckWebRef]-->

Hughes, Krista has shared a OneDrive for Business file with you. To view it, click the link below.



CAFO Petition - Response Options.docx

<!--[endif]-->

Hi Steve and Mary Ellen,

This email updates you on the plans for briefing Dimple/Radhika on the options in this case, describes the revisions to the briefing paper following our meeting with OW on Wednesday, and attaches a document related to Ex.5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]

Sent: 7/6/2021 8:13:08 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]

CC: Kupchan, Simma [Kupchan.Simma@epa.gov]

Subject: RE: 304(m)/CAFO Litigation Follow Up

Attachments: sn comments CAFO Petition - Response Options (002).docx

Thanks Krista – I think we should brief dimple as scheduled. I think the most critical and new factor Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Friday, July 2, 2021 1:16 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>

Cc: Kupchan, Simma < Kupchan. Simma@epa.gov> **Subject:** 304(m)/CAFO Litigation Follow Up

Hi Steve and Mary Ellen,

This email updates you on the plans for briefing Dimple/Radhika on the options in this case, describes the revisions to the briefing paper following our meeting with OW on Wednesday, and attaches a document related [EX. 5 Attorney Work Product (AWP)]

Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 9/28/2021 9:11:17 PM

To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Hughes, Krista

[hughes.krista@epa.gov]

Subject: FW: request re CAFO power point **Attachments**: OW CAFO Strategy draft .pptx

Steve,

Per the discussion you had with Mary Ellen, attached is the draft briefing. Note this is a staff draft, that hasn't been review by OWM management, OST management nor your staff, but you can see some ideas and perhaps where it may be going.

From: Levine, MaryEllen <levine.maryellen@epa.gov>

Sent: Tuesday, September 28, 2021 4:49 PM **To:** Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Cc: Kupchan, Simma < Kupchan. Simma@epa.gov>; Hughes, Krista < hughes. krista@epa.gov>

Subject: request re CAFO power point

Krista and I spoke to Steve Neugeboren today about the EAD/OST lawsuit on Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

decision. I wanted to give him the sense of the briefing you are preparing on CAFOs and wondered if Steve could have access to the document just to get a sense of they types of issues under consideration. He wouldn't be editing he document, just seeing what's going on for awareness. Either way, it's ok.

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel for Technology & Wet Weather
Water Law Office, Office of General Counsel, U.S. EPA
202 564-1345



Outcomes for Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Section 5. Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) Section 6. Ex. 5 Deliberative Process (DP) Office of Water Agency Office of Water

Section 1.

Ex. 5 Deliberative Process (DP)

 NPDES CAFO Regulations CAFOs have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

 Approximately only one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)



Office of Water

Ex. 5 Deliberative Process (DP)



Office of Water

Section 2.

Ex. 5 Deliberative Process (DP)

* CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways¹.
- Pollutants associated with CAFO animal waste include: nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (e. coli).

Ex. 5 Deliberative Process (DP)

¹ 9th Citting 2003 rule



Office of Water

Section 2.

Ex. 5 Deliberative Process (DP)

• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia².
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - · While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions³.



Office of Water

² https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf (Page ?) 2 9°C otting 2001 premoted rule

* EPA regulates both production areas and land-application areas of CAFOs.

Ex. 5 Deliberative Process (DP)

EPA's CAFO-specific regs include the CAFO ELGs (40 CFR 412) and permitting regs at 40 CFR 122.23.

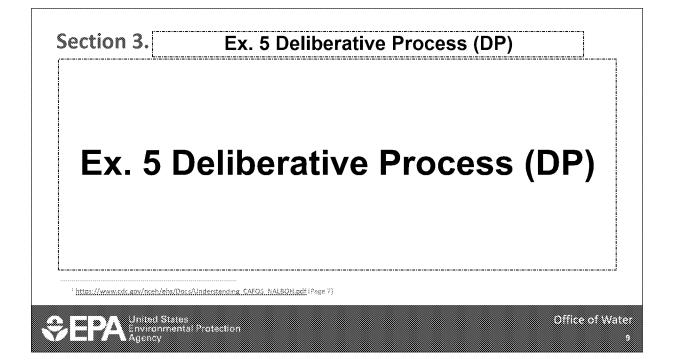


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Ex. 5 Deliberative Process (DP)



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Office of Water

Section 4. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3.3

Section 5. CAFO Petitions Currently Pending

There are currently 3 rulemaking pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch v. EPA, No. . (9th CIr.) 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Office of Water

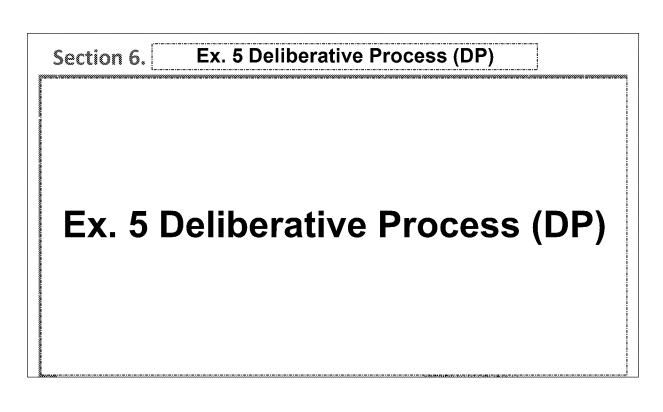
Section 6. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water Agency 15

Ex. 5 Deliberative Process (DP)



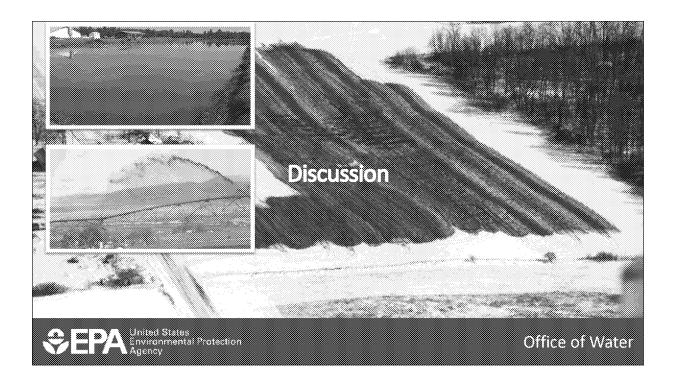
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

.,,



From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/10/2021 12:59:43 PM

To: Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov]; Buterbaugh, Kristin

[Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma

[Kupchan.Simma@epa.gov]; Savitske, Greg [Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov];

Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna

[Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen

[levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Pilant, Drew [Pilant.Drew@epa.gov]; Jann,

Stephen [jann.stephen@epa.gov]; Gluckman, Matthew [gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Tentative

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

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From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 5/25/2021 9:03:00 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George

[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]

Subject: RE: CAFO / 304(m) New Litigation
Attachments: Climate-Petition-4-6-21-FINAL.pdf

Attached is the Petition for rulemaking with respect to dairy (500+ cows) and hog (1000+ hogs) operations under the CAA Section 111 as significant sources of air pollution that I mentioned on the call today. The petition was filed on April 6, 2021. FWW is one of the petitioners.

As I mentioned, the petition is clear that biogas / energy recovery is not a preferred option in their view. This petition appears to be an alternative approach to a petition to regulate emissions as a significant source of GHG which the Agency denied in 2017.

-----Original Appointment-----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:20 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen; Zobrist, Marcus **Subject:** CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

fyi

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:07 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen

Subject: CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Thank you, Krista

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Sent: 8/2/2021 6:50:21 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

[Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov];

Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

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2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

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Appointment

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 9/28/2021 3:16:32 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen

[levine.maryellen@epa.gov]

Subject: Check in on FWW v. EPA (CAFO/304(m) Litigation)

Location: Microsoft Teams Meeting

Start: 9/28/2021 7:00:00 PM **End**: 9/28/2021 7:15:00 PM

Show Time As: Busy

Required

Neugeboren, Steven; Levine, MaryEllen

Attendees:

Deliberative – Attorney Work Product – Mediation Confidential

Ex. 5 AC/AWP

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From: Levine, MaryEllen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F59EF87B9924425897C750435BAD5522-MLEVINE]

Sent: 7/19/2021 6:22:29 PM

To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]

CC: Hughes, Krista [hughes.krista@epa.gov]

Subject: local copy of CAFO briefing paper sent to clients Fri am

Attachments: Revised Briefing Paper on 304(m)-CAFO Litigation - 7.16.2021.docx

- Mary Ellen

Mary Ellen Levine Assistant General Counsel for Technology & Wet Weather Water Law Office, Office of General Counsel, U.S. EPA 202 564-1345 **Ex. 6 Personal Privacy (PP)** and on Leave Calendar.

Meetings:

Deadlines:

- 11/16 CBD v. EPA & FWS (9th Cir.) (PGP) first mediation 9th Cir.
- 11/24 EPA Brief on San Fran Permit: (Pete/Pooja)(Dawn)
- 12/15 EPA Brief in new permit appeal City of Keene., NH challenging WQBEL for pH, aluminum, and copper (ORC 1 - Kristen Scherb, Samir Bukhari)
- 12/15 -- Petitioners' Opening Brief CBD v. EPA (9th Cir.)(MSGP) (Chris)
- 1/14 (from 8/9) Petitioner's Opening Brief in Food & Water Watch (9th Cir.)(304(m)

Ex. 5 Attorney Client (AC)

- 1/22 EPA answering brief on Los Alamos Residual Designation (Pete/Renea Ryland)
- 1/28 PGP petition for review CBS v. EPA & Services (9th Cir.) Stay ends (end of jud review period).
- 2/18 EPA's Answering brief CBD v. EPA (9th Cir.)(MSGP)(Chris)
- 3/4 Respondent-Intervenors' Brief CBD v. EPA (9th Cir.)(MSGP)
- 3/25 Petitioners' Reply CBD v. EPA (9th Cir.)(MSGP)

Priorities this week: (Items on reg review/hot issues have a (*) Steve-

*CAFO Petition for Review - Food & Water Watch petition

• Residual Designation - 10th Cir Challenge to RD for Los Alamos (Lab, County) - awaiting

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Dawn- Permitting/VIDA Issues/Amicus Enforcement:

General:

Run current SWERLO/ARLO/WLO process Run SHP 2022 process. GS-7/1. Take on outreach and inclusion from Ryland.

Assignments - Unassigned:

316(b)

Ex. 5 Attorney Client (AC)

Issues to raise at OW Staff:

Wet Weather:

Ex. 5 Attorney Client (AC)

- CGP final permit in for review -Pete-
- MS4 (Pete)

Ex. 5 Attorney Client (AC)

Residual Designation - (Pete)

Ex. 5 Attorney Client (AC)

• MSGP - (Chris)

Ex. 5 Attorney Client (AC)

• Blending - Andrea - last Administration

| PGP (Alec) lawsuit CBD v. EPA & FWS 21-71306 (9th Cir.) | | | |
|--|---|--|--|
| PGP (Alec) lawsuit CBD v. EPA & FWS 21-71306 (9 th Cir.) | | | |
| Ex. 5 Attorney Client (AC) | | | |
| *POTW privatization – F Ex. 5 Attorney Client (AC) Ex. 5 Attorney Client (AC) | | | |
| Reg 4 Aquaculture permit challenge | | | |
| 316(b) – (unassigned) | | | |
| Ex. 5 Attorney Client (AC) | | | |
| ■ Gold King: Ex. 5 Attorney Client (AC) | | | |
| PFAS CWA technical assistance – (Heidi Nalven) | | | |
| E Reporting rule –date change final. Rec'd auth to concur 9/10/20 (Alec)/two delegations in process CRFLO) | | | |
| Biosolids- (Pete) | | | |
| | | | |
| Ex. 5 Attorney Client (AC) | | | |
| Analytical Methods rule; (Chase) | | | |
| • 308 (Alec) | | | |
| • CAFOs – (Simma) | | | |
| Ex. 5 Attorney Client (AC |) | | |



From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/9/2021 6:28:50 PM

To: Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov]; Buterbaugh, Kristin

[Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma

[Kupchan.Simma@epa.gov]; Savitske, Greg [Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov];

Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna

[Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen

[levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Pilant, Drew [Pilant.Drew@epa.gov]; Jann,

Stephen [jann.stephen@epa.gov]; Gluckman, Matthew [gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Tentative

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

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Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 11/17/2021 6:56:48 PM

To: Levine, MaryEllen [levine.maryellen@epa.gov]

CC: Messier, Dawn [Messier.Dawn@epa.gov]

Subject: RE: revised CAFO strategy briefing doc for OW

Attachments: OW CAFO Strategy draft 11-04-21 cjk_IB_CLEAN.pptx

Attached is the current draft of the briefing with the Ex. 5 Deliberative Process (DP) still included. Also, there are a couple of Ex. 5 Deliberative Process (DP)

The briefing is currently in management review in OWM.

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Wednesday, November 17, 2021 11:50 AM
To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>

Subject: RE: revised CAFO strategy briefing doc for OW

Marcus – I cannot access the latest power point on CAFOs. Not sure if this is still a live link you if you could send me the latest.

Dawn asked me today about it Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Would you be able to send it to her – or if it has been taken out – Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thank you.

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel for Technology & Wet Weather
Water Law Office, Office of General Counsel, U.S. EPA
202 564-1345

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Friday, October 8, 2021 5:01 PM

To: Kupchan, Simma < Kupchan.Simma@epa.gov>; Levine, MaryEllen < ievine.maryellen@epa.gov>; Pritts, Jesse

< Pritts.Jesse@epa.gov>; Shriner, Paul < Shriner.Paul@epa.gov>

Cc: Hughes, Krista < hughes.krista@epa.gov>; Molloy, Jennifer < molloy.jennifer@epa.gov>; Utting, George

<Utting.George@epa.gov>; Durant, Chelsea <durant.chelsea@epa.gov>

Subject: revised CAFO strategy briefing doc for OW

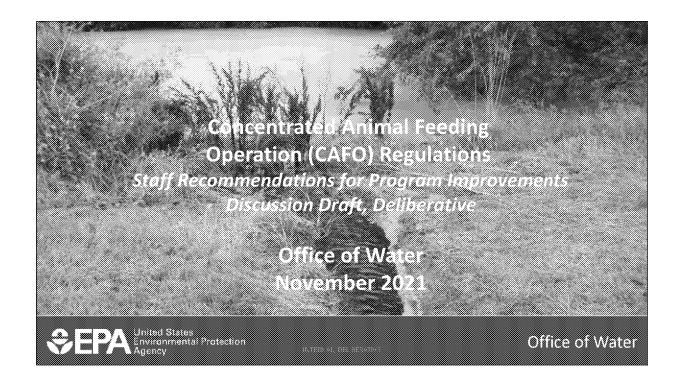
Thank you all for your comments on the first version of the briefing paper. Attached is a revised briefing on the OW CAFO strategy, it has been significantly revised and reorganized based on comments received.

| Section 3 | Ex. 5 Deliberative Process (DP) | and section 4 now describes the Ex. 6 Deliberative Process (DP) | |
|--|--|---|--|
| Extonomorphisms on Perhaps helpful to include would be for the | | Ex. 5 Deliberative Process (DP) | |
| Ex. 5 Deliberative | e Process (DP) | | |
| I'm also open to provid | m also open to providing Ex. 5 Deliberative Process (DP) | | |
| Also, while the focus is on Ex. 5 Deliberative Process (DP) | | | |

If you could provide comments by Thursday, Oct $14^{\rm th}$, that would be helpful.

Marcus Zobrist |
Chief, Industrial Branch
U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-8311 | Mobile: | Ex. 8 Personal Privacy (PP) |
Zobrist Marcus@epa.gov

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Briefing Overview

- *Section 1.
- Section 2.
- *Section 3. Ex. 5 Deliberative Process (DP)
- *Section 4.
- *Section 5.



Section 1.

Ex. 5 Deliberative Process (DP)

NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

 Approximately, two-third of Large CAFOs in the U.S. are <u>not</u> covered under NPDES permits. Few Medium CAFOs and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)

There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP) See Appendix A.



Focus of EPA Enforcement:

 CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 - FY18) - a variety of approaches were tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil iudicial actions.

Ex. 5 Deliberative Process (DP)

Since FY19, CAFOs have been returned to the NPDES core program.

No New EPA Civil Judicial Actions in Recent Years Because:

Ex. 5 Deliberative Process (DP)



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4

Section 2.

Ex. 5 Deliberative Process (DP)

CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- * In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- * Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria including *E. coli*; antibiotics and other drugs; metals; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (*E. coli*).

Ex. 5 Deliberative Process (DP)



Odors are one of the most common complaints associated with CAFOs. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

- * Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the US.



Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

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Section 4. Ex. 5 Deliberative Process (DP)

Technology [a. 1 Deliberative Process (DP)]

Ex. 5 Deliberative Process (DP)

SEPA United States Agents Protection

Ex. 5 Deliberative Process (DP)



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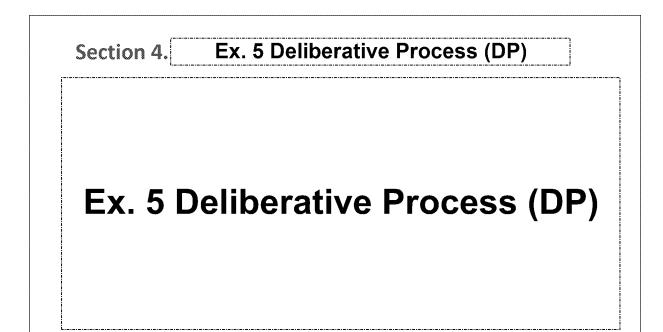


Section 4.

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Ex. 5 Deliberative Process (DP)





INTERNAL, DELIBERATIVE

Ex. 5 Deliberative Process (DP)





Ex. 5 Deliberative Process (DP)



Section 5.

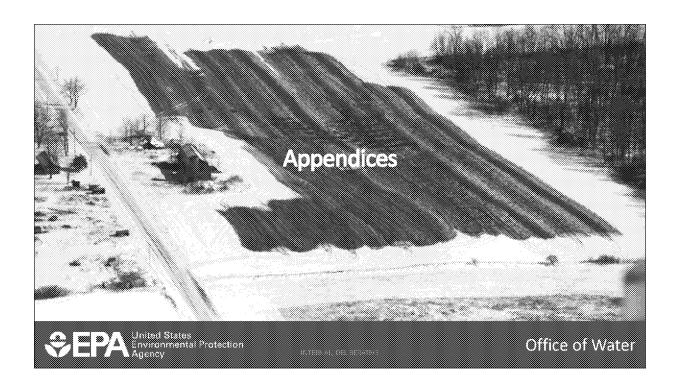
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)





Appendix A. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Appointment

Hughes, Krista [hughes.krista@epa.gov] From:

6/1/2021 9:00:32 PM Sent:

To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]

Subject: Discuss New 304(m) / CAFO Litigation Attachments: CAFO Petition - Response Options.docx

Location: Microsoft Teams Meeting

Start: 6/2/2021 1:15:00 PM End: 6/2/2021 1:45:00 PM

Show Time As: Tentative

Required Neugeboren, Steven; Levine, MaryEllen

Attendees:

<!--[if Ite mso 15 || CheckWebRef]-->

Hughes, Krista has shared a OneDrive for Business file with you. To view it, click the link below.



CAFO Petition - Response Options.docx

<!--[endif]-->

Steve - OneDrive and non-OneDrive version of a draft briefing paper on the new 304(m)/CAFO litigation are attached. There are a few placeholders, highlighted in yellow in the attached document, for areas I am still working to fill in, but we wanted to have an initial discussion with you of the options in this case. Thank you.

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From: Nguyen, Amelia [Sawyers.Andrew@epa.gov]

Sent: 1/5/2022 1:14:11 PM

To: Sawyers, Andrew [Sawyers.Andrew@epa.gov]; Miller, Wynne [Miller.Wynne@epa.gov]; Kloss, Christopher

[Kloss.Christopher@epa.gov]; Lopez-Carbo, Maria [Lopez-Carbo.Maria@epa.gov]; Zobrist, Marcus

[Zobrist.Marcus@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov];

Utting, George [Utting.George@epa.gov]; Sylvester, Frank [Sylvester.Frank.J@epa.gov]; Nguyen, Amelia

[nguyen.amelia@epa.gov]; Lynch, Marissa [Lynch.Marissa@epa.gov]

Subject: CAFO OWM Pre-Brief

Attachments: OW CAFO Strategy Draft Briefing 6Jan2022ML.pptx

Location: Microsoft Teams Meeting

Start: 1/13/2022 6:00:00 PM **End**: 1/13/2022 7:00:00 PM

Show Time As: Busy

Required Miller, Wynne; Kloss, Christopher; Lopez-Carbo, Maria; Zobrist, Marcus; Molloy, Jennifer; Durant, Chelsea; Utting,

Attendees: George; Sylvester, Frank; Nguyen, Amelia; Lynch, Marissa

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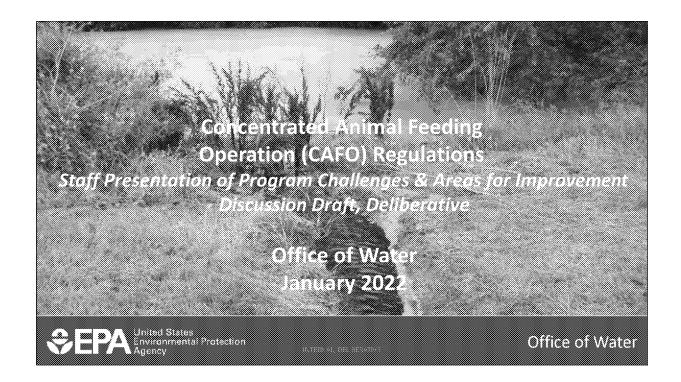
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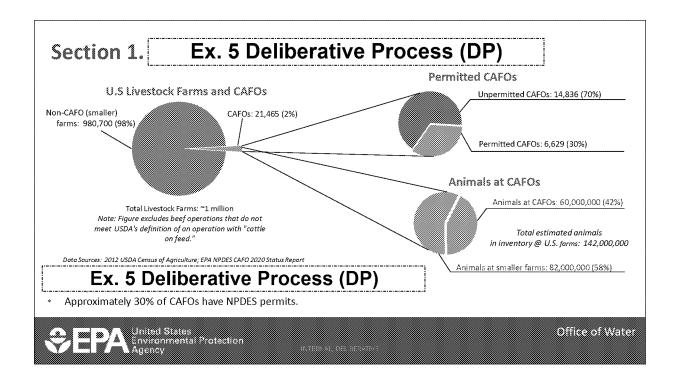


Briefing Overview

- *Section 1.
- *Section 2.
- *Section 3.
- *Section 4.

Ex. 5 Deliberative Process (DP)





 NPDES CAFO Regulations were promulgated/revised in 1976, 2003, 2008, and 2012. ELGs were promulgated/revised in 1974, 2003, and 2008.

Ex. 5 Deliberative Process (DP)

* There are four petitions (3 water, 1 air) before the Agency to revise CAFO regulations Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

i See Appendix B.



Section 2.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- In 2008, EPA estimated that approximately 75% of CAFOs discharge to waterways.
- Pollutants associated with CAFO animal waste include nitrogen and phosphorus; viruses and bacteria including E. coli; antibiotics and other drugs; metals; pesticides; and hormones.
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)

USDA estimates that appropriate nutrient management practices are not followed for 92% of manured acres

Ex. 5 Deliberative Process (DP)



Section 2.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

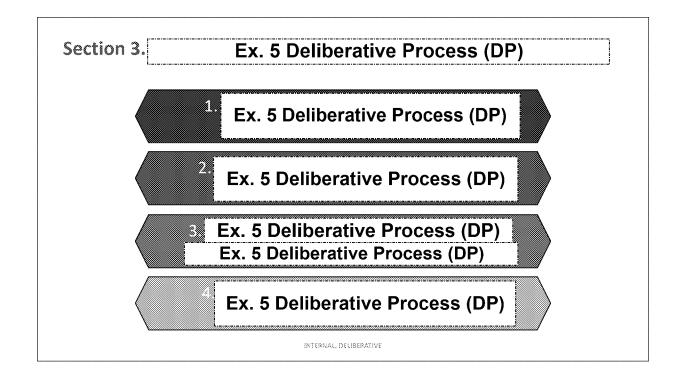
* Odors are one of the most common complaints about CAFOs. Ex. 5 Deliberative Process IDP

Ex. 5 Deliberative Process (DP)

- * Manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than CO₂.
 - _o EPA has assessed manure from animal agriculture as the 4th and 5th leading sources of nitrous oxide and methane emissions, respectively, in the U.S.



Office of Water



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)



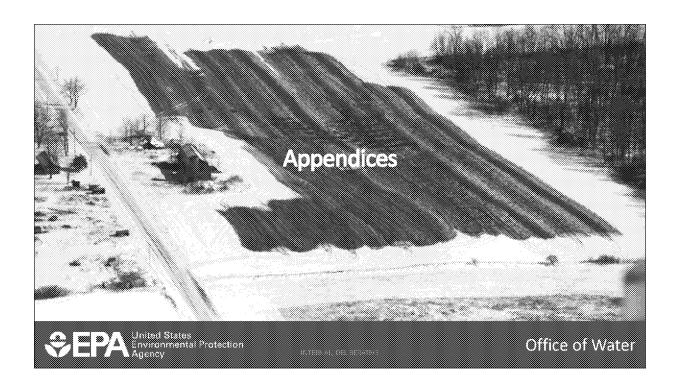
Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)





Appendix A. Ex. 5 Deliberative Process (DP)

Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches were tried to increase CWA compliance and NPDES permit coverage. During the last eight years of the NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial actions.
- Noncompliance is difficult to establish even when water quality impacts have been documented.
- Since FY19, CAFOs have been returned to the NPDES core enforcement program.

Ex. 5 Deliberative Process (DP)



Appendix B. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Appointment

From: Miller, Wynne Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

Sent: 4/22/2021 6:27:03 PM

To: Miller, Wynne [Miller.Wynne@epa.gov]

Subject: FW: Pre-brief for OW CAFO Briefing

Attachments: Supplemental CAFO information.pptx; CAFO Briefing April 2 2021.docx

Location: Microsoft Teams Meeting

Start: 4/28/2021 3:00:00 PM **End**: 4/28/2021 3:30:00 PM

Show Time As: Tentative

----Original Appointment-----

From: Sylvester, Francis On Behalf Of Sawyers, Andrew

Sent: Monday, April 19, 2021 11:21 AM

To: Sawyers, Andrew; Kloss, Christopher; Zobrist, Marcus; Molloy, Jennifer; Utting, George; Durant, Chelsea;

Bathersfield, Nizanna; Lopez-Carbo, Maria; Kupchan, Simma; Halter, Emily

Cc: Nguyen, Amelia; Sylvester, Francis **Subject:** Pre-brief for OW CAFO Briefing

When: Wednesday, April 28, 2021 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Microsoft Teams meeting

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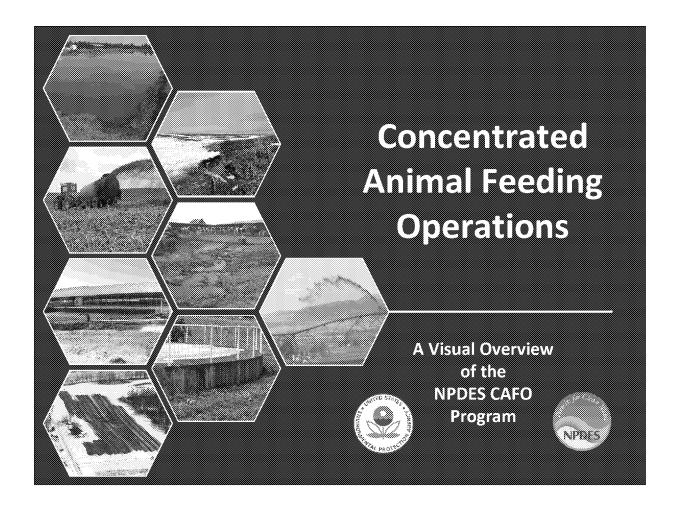
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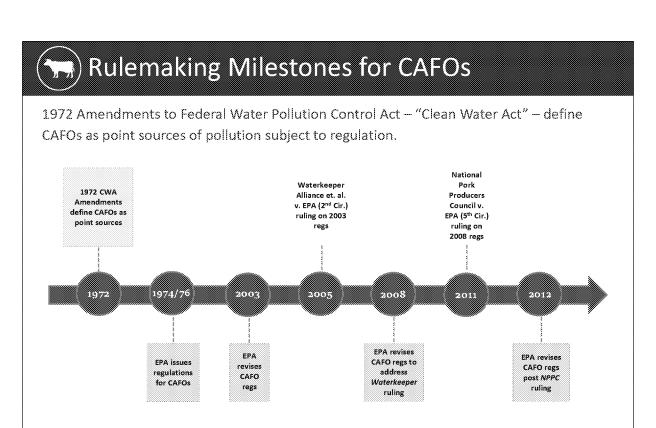
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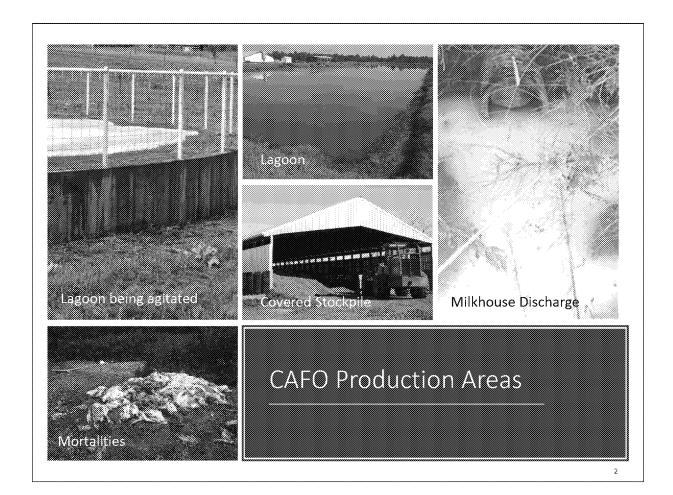




3/8/2017: EPA received petition from Food & Water Watch and 33 other organizations to revise CAFO regulations to address implementation challenges.

.

Ex. 5 Deliberative Process (DP)



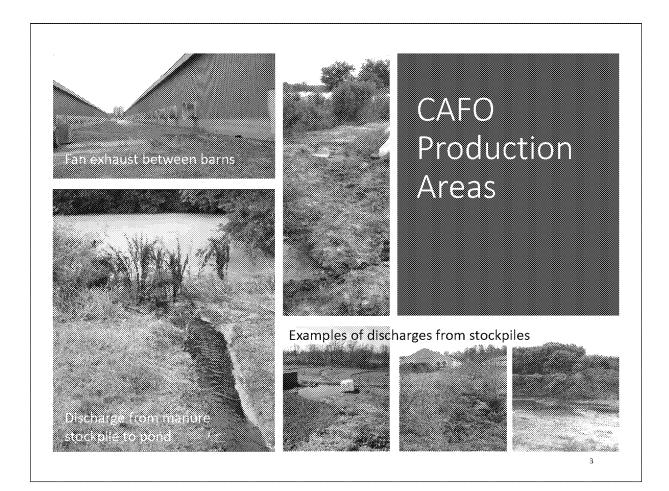
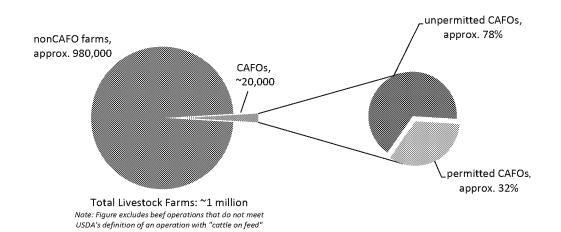




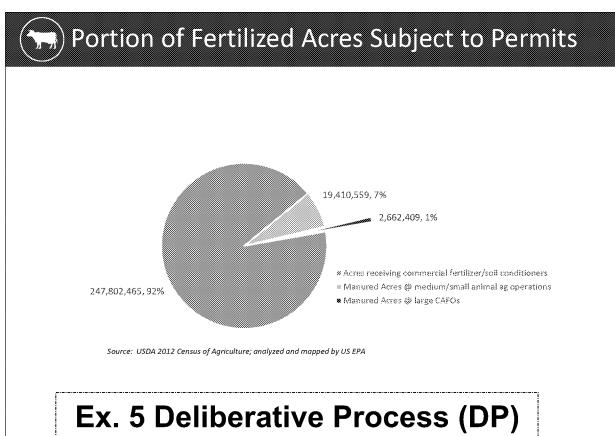
Photo notes: Map of Farmstead in 1996.



Data Sources: 2012 USDA Census of Agriculture; EPA NPDES CAFO 2019 Status Report

Ex. 5 Deliberative Process (DP)

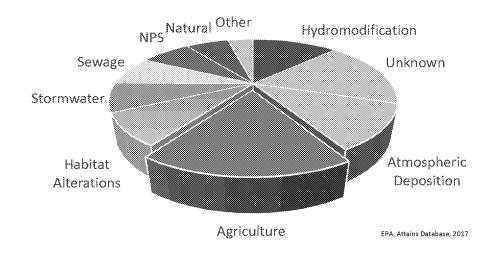
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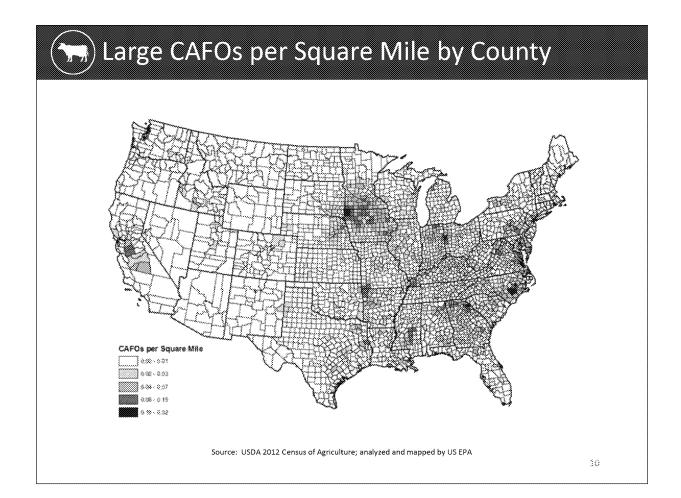


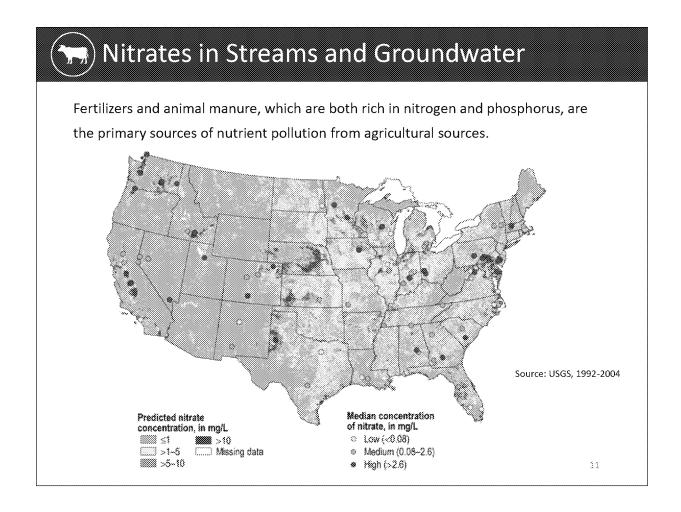


Water Quality Impairments in the U.S.

Primary sources of water quality impairment in U.S. waters are agricultural.







Source for nutrient pollution: https://www.epa.gov/nutrientpollution/sources-and-solutions-agriculture

BRIEFING MEMO

April 2021

MEMORANDUM FOR THE ASSISTANT ADMINISTRATOR

POC: Andrew Sawyers, OWM, sawyers.andrew@epa.gov

SUBJECT: NPDES Concentrated Animal Feeding Operation (CAFO) Program

- I. **REQUESTING OFFICE:** OWM, Water Permits Division
- II. TIMING: No deadlines.
- **III. PURPOSE:** Provide an overview of the National Pollutant Discharge Elimination System (NPDES) CAFO program.

IV. BACKGROUND AND HISTORY:

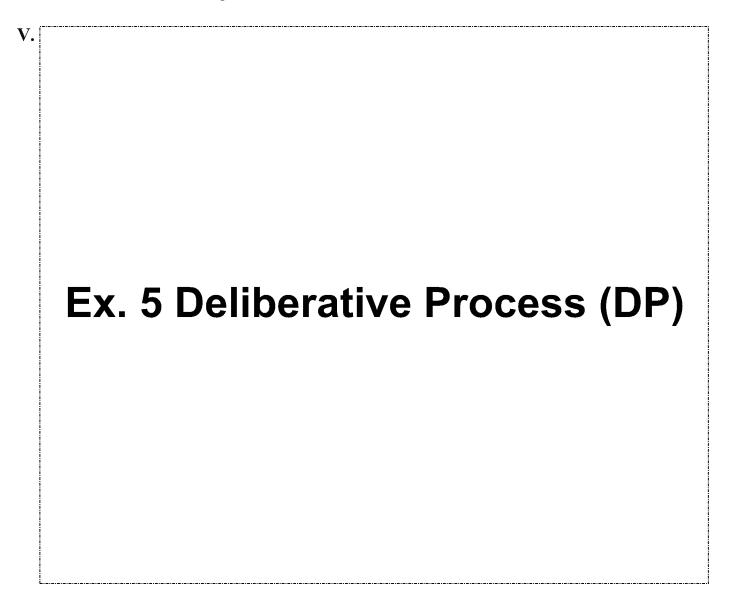
- 1970s: CAFOs were identified as point sources in the Clean Water Act (CWA). EPA promulgated effluent guidelines (1974) and NPDES regulations (1976).
- **2003:** EPA made substantial changes to both the NPDES permitting regulations and the effluent guidelines. EPA's 2003 CAFO rule was challenged by Waterkeeper Alliance and other parties, including industry groups, in the Second Circuit Court of Appeals¹.
- The court remanded significant parts of the 2003 rule, holding that all CAFOs do not need to obtain a permit and that nutrient management plan terms are part of CAFO permits and therefore must be made available for public notice.
- The court upheld the Agency's interpretation that discharges from fields where manure is applied consistent with nutrient management plans (i.e., at rates that crops can absorb) are subject to the CWA's "agricultural stormwater" exemption.
- **2008:** EPA issued revisions to address the *Waterkeeper* remand. The 2008 rule was challenged by National Pork Producers Council (NPCC), Natural Resources Defense Council (NRDC) and other parties in the Fifth Circuit Court of Appeals².

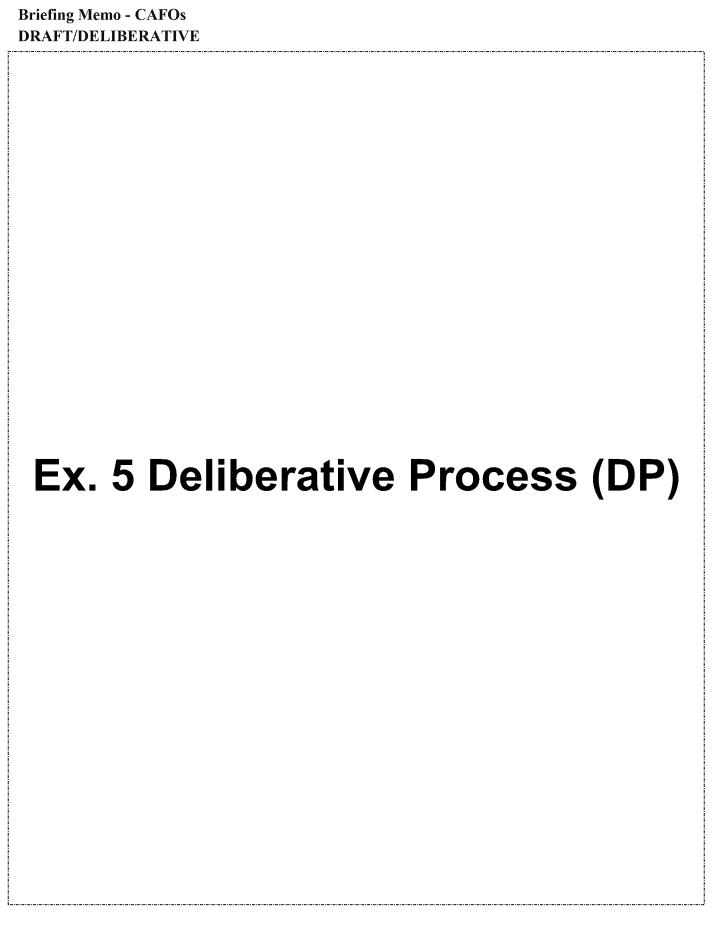
¹ Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2d Cir. 2005).

² National Pork Producers Council v. EPA, 635 F.3d 738, 756 (5th Cir. 2011).

Briefing Memo - CAFOs DRAFT/DELIBERATIVE

- The Fifth Circuit issued a partial remand, holding that EPA can only require CAFOs that *actually discharge* to obtain a permit. NRDC settled out of the NPPC lawsuit in exchange for EPA proposing the CAFO reporting rule in 2011. EPA did not finalize the CAFO reporting rule.
- 2012: EPA issued a revised rule that replaced the former "duty to apply" (requirement that all CAFOs apply for a permit) provision by stating that CAFOs may not discharge without an NPDES permit.
- Between 2011 and 2019, the number of permitted CAFOs in the U.S. has decreased by roughly 12% while the number of CAFOs has increased by roughly 12.6%. There are approximately 21,000 CAFOs in the U.S. and about 6,700 (32%) have NPDES coverage.





EPA's Efforts to Enhance Program Implementation to Improve Water Quality:

- The Animal Agriculture Discussion Group (AADG), established by OWM in 2013, provides a forum for industry to engage with federal partners and permitting authorities, to discuss implementation challenges and best practices.
- NRCS and EPA developed nutrient management planning tools and a series of online animal agriculture education modules.
- EPA collaborated with the US Poultry & Egg Association to develop a set of compliance videos. Region 3 also collaborated with U.S. Poultry and Egg on a "What to Expect When You're Inspected" video.
- Nutrient Recycling Challenge: Significant engagement of a wide variety of stakeholders to promote innovative technologies for utilizing manure.
- Provided contractor assistance to several states and tribes on discrete projects that aimed to address a particular problem or enhance a particular program.
- Continue to engage with poultry & egg sector on possibilities to simplify NMP template for non-CAFO AFOs.
- State Program Compendiums to highlight note-worthy state program features.
- ACWA-sponsored forums, biennial roundtables and special topic engagements with state NPDES programs.

VI. <u>NEXT STEPS/UPCOMING DEADLINES:</u>

Current and Pending Issues:

• In 2017, Food & Water Watch (FWW), et al., petitioned EPA to make changes to the CAFO program.

| 0 | The petition outlines the Ex. 5 Deliberative Process (DP) of the CAFO program and suggest | | | | | | |
|---|---|--|--|--|--|--|--|
| | Ex. 5 Deliberative Process (DP) | | | | | | |
| | Ex. 5 Deliberative Process (DP) | | | | | | |

- \circ In 2017, EPA met several times with FWW to discuss their requested changes.
- o EPA has not formally responded to the petition. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

- In 2015 Erika Brotzman, a law student at the University of Colorado, petitioned EPA to make changes to the CAFO program. EPA has not formally responded to the petition.
- In 2020 Food & Water Watch challenged EPA Region 10's Idaho CAFO General Permit in the Ninth Circuit. Oral argument is scheduled for May 6, 2021.

- EPA Region 6 is in the process of reissuing the New Mexico CAFO General
 Permit. Ex. 5 Deliberative Process (DP)
- Ohio Department of Agriculture is seeking NPDES authorization to assume the CAFO permitting program from Ohio EPA.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

VII. <u>APPENDICES:</u> See appended PowerPoint slides for additional information, data and figures.

Message

From: Pritts, Jesse [Pritts.Jesse@epa.gov]

Sent: 8/2/2021 7:18:48 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov]

Subject: RE: CAFO strategic direction - starting a conversation

Hi Jenny – sounds good, thanks for organizing.

From: Molloy, Jennifer <molloy.jennifer@epa.gov>

Sent: Monday, August 02, 2021 2:40 PM

To: Pritts, Jesse <Pritts.Jesse@epa.gov>; Shriner, Paul <Shriner.Paul@epa.gov>

Subject: RE: CAFO strategic direction - starting a conversation

Jesse and Paul:

The request is going to OW to schedule a briefing with Radhika the last week of August. I'm going to schedule something for next week so we can all discuss how we want to frame that briefing. This will include a few folks OWM, OST, OECA, OGC and a couple of folks from Regional offices who have expressed an interest. Trying very hard not to make this a cast of thousands so that we can keep it in the fast lane and move pretty efficiently. Also, given the timeline, I'll schedule meetings around quorums rather than 100% participation.

Thanks, Jenny

Jenny Molloy

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) (while working remotely)

(she/her/hers)

From: Pritts, Jesse < Pritts. Jesse@epa.gov > Sent: Thursday, July 29, 2021 10:04 AM

To: Zobrist, Marcus <Zobrist Marcus@epa.gov>; Shriner, Paul <Shriner.Paul@epa.gov>

Cc: Molloy, Jennifer <molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea

<a

Subject: RE: CAFO strategic direction - starting a conversation

Hi Marcus,

The plan you outlined sounds like a good approach. It will be informative **Ex. 5 Deliberative Process (DP)** Pau and I are going to talk this afternoon about **Ex. 5 Deliberative Process (DP)**Ex. 5 Deliberative Process (DP)

Shall we plan to touch base after that and discuss next steps?

Thanks

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Wednesday, July 28, 2021 5:29 PM

To: Pritts, Jesse < Pritts. Jesse@epa.gov>; Shriner, Paul < Shriner. Paul@epa.gov>

Cc: Molloy, Jennifer < molloy, jennifer@epa.gov>; Utting, George < Utting. George@epa.gov>; Durant, Chelsea

<durant.chelsea@epa.gov>; Scozzafava, MichaelE <Scozzafava.MichaelE@epa.gov>

Subject: CAFO strategic direction - starting a conversation

Jesse and Paul,

| Plan 14 briefing, Radhika re lead. Staff from OWM and OWM's draft briefing outlin forward. I would also draw Ex. 5 I more detail. Perhaps we m | equested E OGC met yesterday to discuss so he with some very preliminary to your attention to Deliberative Process (DP) | uggested that I reach out to both of you. Last week, at the ix. 5 Deliberative Process (DP) some ideas on how to respond to her request. Below is opics that we might explore as potential options moving Ex. 5 Deliberative Process (DP) I suggest that she needs to understand it in Ex. 5 Deliberative Process (DP) I believe that could help inform Ex. 5 Deliberative Process (DP) | | | | | |
|---|--|--|--|--|--|--|--|
| may be in their court. Add meeting invite that I receiv Ex. 5 Deliberative Pi | eaching out to OECA regarding stionally, the Air program is also ed from them. I think if could be cocess (DP) OGC mentions at some point in the not to describe the control of the contr | Ex. 5 Deliberative Process (DP) facing a petition from FWW on CAFOs, I will forward you a e beneficial to compare notes and strategize Ex.5 Deliberative Process (DP) ioned that FWW may want to have a discussion with us | | | | | |
| As I mentioned, below is the draft briefing outline, you'll note one of the possible solutions Ex. 5 Deliberative Process (DP) This is Ex. 5 Deliberative Process (DP) Very draft briefing outline: | | | | | | | |
| | Ex. 5 Delil | berative Process (DP) | | | | | |

Marcus Zobrist |
Chief, Industrial Branch
U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-8311 | Mobile: | Ex. 6 Personal Privacy (PP) |
Zobrist.Marcus@epa.gov

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From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/24/2021 3:07:21 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George

[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

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Required Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Thank you, Krista

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Kupchan, Simma [Kupchan.Simma@epa.gov]

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Required Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

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Optional Levine, MaryEllen

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Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

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Sent: 5/24/2021 3:07:21 PM

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[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

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From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/24/2021 3:06:27 PM

To: Molloy, Jennifer [molloy, jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Flanders, Phillip

[Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

Show Time As: Tentative

Required

Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen

Attendees:

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Krista

Thank you,

Microsoft Teams meeting

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Or call in (audio only)

Ex. 6 Personal Privacy (PP) nited States, Washington DC

Phone Conference | Ex. 6 Personal Privacy (PP) |
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Learn More | Meeting options

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/2/2021 6:50:21 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

[Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov];

Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional

Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

Microsoft Teams meeting

Join on your computer or mobile app

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Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP)

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From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/24/2021 3:07:21 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George

[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM End: 5/25/2021 8:00:00 PM

Show Time As: Busy

Required Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Thank you, Krista

Microsoft Teams meeting

Join on your computer or mobile app

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Or call in (audio only)

Ex. 6 Personal Privacy (PP) United States, Washington DC
Phone Conference ID: Ex. 6 Personal Privacy (PP)
Find a local number | Reset PIN

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Learn More | Meeting options

From: Shriner, Paul Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

Sent: 9/28/2021 2:45:56 PM

To: Pritts, Jesse [Pritts.Jesse@epa.gov]
CC: Damico, Brian [Damico.Brian@epa.gov]

Subject: OW CAFO strat

Attachments: OW CAFO Strategy draft 092721_ps.pptx

Very disappointing that they are only sharing just now.

My key takeaway is a Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Happy to discuss further.

-Paul

♦EPA

Paul Shriner, Ph.D.
Engineering and Analysis Division (4303T)
Office of Water / Office of Science & Technology
US EPA, 1200 Pennsylvania Ave. NW, Washington DC 20460
202-566-1076

Effluent Guidelines: www.epa.gov/eg
Analytical Methods: www.epa.gov/cwa-methods



Overview of Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Section 5. CAFO Petitions Currently Pending Section 6. Ex. 5 Deliberative Process (DP) Office of Water Agriculum and States Supplied to the Process (DP)

Section 1. Ex. 5 Deliberative Process (DP)

 NPDES Regulations for CAFOs have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

* Approximately only one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS and essentially no Small CAFOs are covered under NPDES permits.

Ex. 5 Deliberative Process (DP)



Office of Water

Section 1. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

4

Section 2.

Ex. 5 Deliberative Process (DP)

* CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways¹.
- Pollutants associated with CAFO animal waste include: nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (e. coli).

Ex. 5 Deliberative Process (DP)

1 9th Centing 2003 mile



Office of Mater

5

Section 2.

Ex. 5 Deliberative Process (DP)

• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia².
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - · While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions³.



Office of Water

² https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf (Page ?) 2 9°C otting 2001 premoted rule

Section 3. Ex. 5 Deliberative Process (DP)

* EPA regulates both production areas and land-application areas of CAFOs.

Ex. 5 Deliberative Process (DP)

• EPA's CAFO-specific regs include the CAFO ELG (40 CFR 412) and permitting regs at 40 CFR 122.23.



Office of Mater

V.

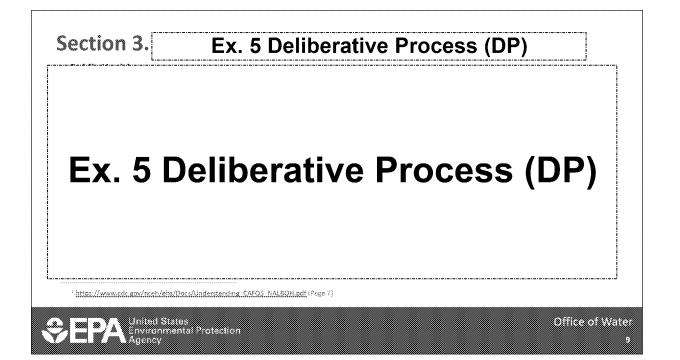
Section 3. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

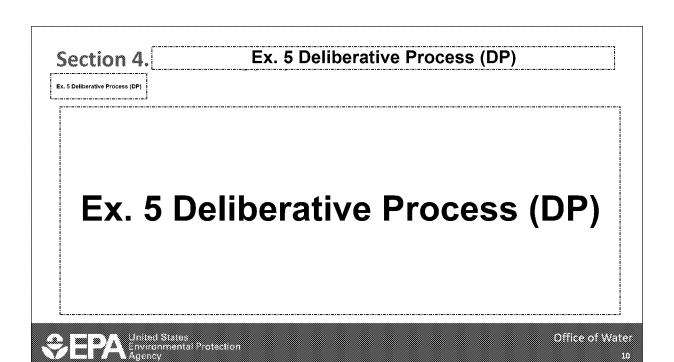


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8



Ex. 5 Deliberative Process (DP)



Section 4. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Mat

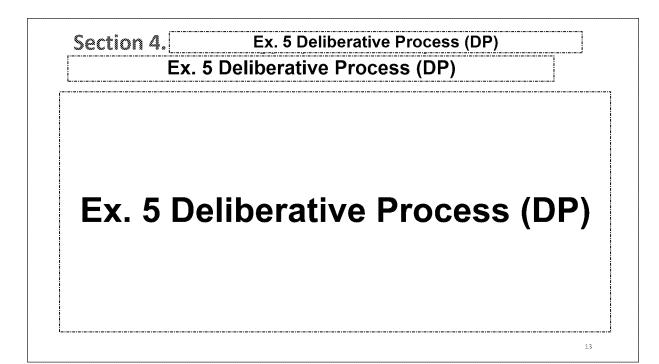
11

Section 4. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)





Section 5. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- Food and Water Watch. 2021. Petition for review of EPA's final action determining that revisions of the effluent limitation guidelines for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Office of Water

14

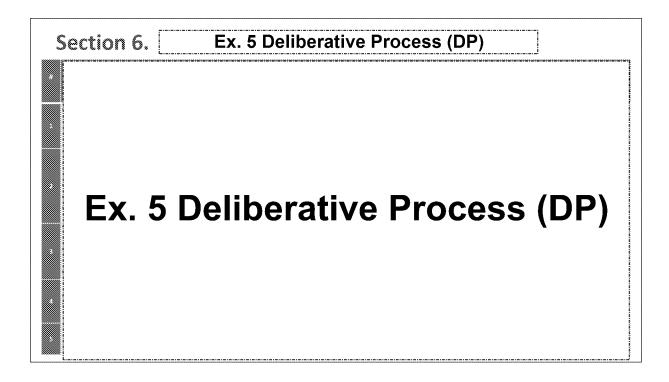
Section 6. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Office of Water Islands

Ex. 5 Deliberative Process (DP)



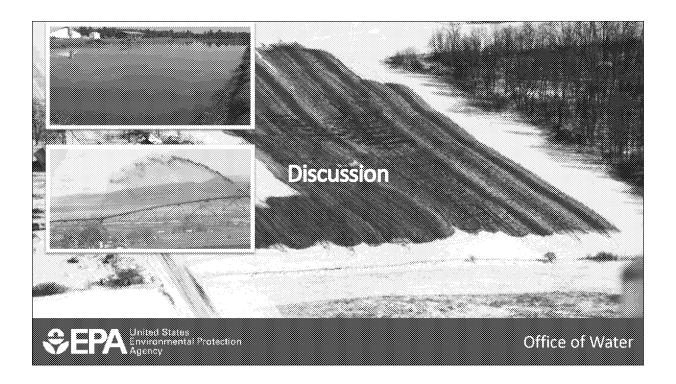
Considerations: Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

.,,



Message

Damico, Brian [Damico.Brian@epa.gov] From:

Sent: 5/24/2021 3:29:50 PM

To: Shriner, Paul [Shriner.Paul@epa.gov]

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Attachments: 1 - Petition for Review.pdf; FWW Petition SUmmary July 11.docx; FWW citizens_cafo_cwa_petition.pdf

FYI...

Expect a meeting request from OGC on this topic.

-B

Brian D'Amico Chief, Technology and Analytical Support Branch **Engineering and Analysis Division** Office of Science and Technology U.S. Environmental Protection Agency

Washington, DC

1202) 566-1069 **(Office)**

Ex. 6 Personal Privacy (PP)

From: Scozzafava, MichaelE <Scozzafava.MichaelE@epa.gov>

Sent: Monday, May 24, 2021 9:13 AM

To: Damico, Brian < Damico. Brian@epa.gov>

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Did you get this?

From: Levine, MaryEllen <levine.maryellen@epa.gov>

Sent: Monday, May 24, 2021 8:46 AM

To: Hughes, Krista < hughes.krista@epa.gov>

Cc: Scozzafava, MichaelE < Scozzafava. MichaelE@epa.gov >; Nagle, Deborah < Nagle. Deborah@epa.gov >; Wood, Robert

<Wood.Robert@epa.gov>; Kloss, Christopher <Kloss.Christopher@epa.gov>; Zobrist, Marcus

<Zobrist.Marcus@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>

Subject: FW: New Litigation - Program Plan 14 and CAFOs - next steps

Krista and OST -

Ex. 5 Deliberative Process (DP)

I am also attaching the 2017 rulemaking petition and draft summary so that the addresses on this e mail have it handy.

Krista is the lead for us on this as the litigation raises 304(m) issues.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

As a starting point - -

Responses to Litigation re: EPA's ELG Program Plan 14 statements Ex. 5 Attorney Work Product (AWP)

Ex. 5 Attorney Work Product (AWP)

- Mary Ellen

Mary Ellen Levine Assistant General Counsel for Technology & Wet Weather Water Law Office, Office of General Counsel, U.S. EPA 202 564-1345

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Friday, May 21, 2021 2:10 PM

To: Nagle, Deborah < Nagle. Deborah@epa.gov>; Wood, Robert < Wood. Robert@epa.gov>; Scozzafava, Michael E

<Scozzafava.MichaelE@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Flanders, Phillip.

<<u>Flanders.Phillip@epa.gov</u>>; Sawyers, Andrew <<u>Sawyers.Andrew@epa.gov</u>>; Miller, Wynne <<u>Miller.Wynne@epa.gov</u>>;

Kloss, Christopher < Kloss, Christopher@epa.gov>; Lopez-Carbo, Maria < Lopez-Carbo.Maria@epa.gov>; Zobrist, Marcus

<<u>Zobrist.Marcus@epa.gov></u>; Molloy, Jennifer <<u>molloy.jennifer@epa.gov></u>; Utting, George <<u>Utting.George@epa.gov></u>

Cc: Levine, MaryEllen < levine.maryellen@epa.gov >; Kupchan, Simma < Kupchan.Simma@epa.gov >

Subject: New Litigation - Program Plan 14 and CAFOs

On May 20, 2021, Food and Water Watch filed the attached Petition for Review of statements in EPA's "Effluent Guidelines Program Plan 14" indicating that revision of the effluent limitations guidelines for the CAFO industrial point source category is not appropriate at this time.

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thank you, Krista

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

| Message | | |
|--|--|---|
| From: Sent: To: Subject: | Pritts, Jesse [Pritts.Jesse@epa.gov] 7/29/2021 11:38:37 AM Shriner, Paul [Shriner.Paul@epa.gov] FW: CAFO strategic direction - starting a conv | ersation |
| Hi Paul – car Thanks | we talk today? I'd like to hear your though | ts on Ex. 5 Deliberative Process (DP) s 11 AM good for you? |
| Sent: Wedne To: Pritts, Je Cc: Molloy, J <durant.che< td=""><td>ot, Marcus <zobrist.marcus@epa.gov> esday, July 28, 2021 5:29 PM sse <pritts.jesse@epa.gov>; Shriner, Paul <s ennifer <molloy.jennifer@epa.gov>; Utting, sea@epa.gov>; Scozzafava, MichaelE <scoz O strategic direction - starting a conversatio</scoz </molloy.jennifer@epa.gov></s </pritts.jesse@epa.gov></zobrist.marcus@epa.gov></td><td>, George <utting.george@epa.gov>; Durant, Chelsea zafava.MichaelE@epa.gov></utting.george@epa.gov></td></durant.che<> | ot, Marcus <zobrist.marcus@epa.gov> esday, July 28, 2021 5:29 PM sse <pritts.jesse@epa.gov>; Shriner, Paul <s ennifer <molloy.jennifer@epa.gov>; Utting, sea@epa.gov>; Scozzafava, MichaelE <scoz O strategic direction - starting a conversatio</scoz </molloy.jennifer@epa.gov></s </pritts.jesse@epa.gov></zobrist.marcus@epa.gov> | , George <utting.george@epa.gov>; Durant, Chelsea zafava.MichaelE@epa.gov></utting.george@epa.gov> |
| Jesse and Pa | ul, | |
| Plan 14 brief lead. Staff fi OWM's draf | ing, Radhika requested a further briefing or om OWM and OGC met yesterday to discus | Ex. 5 Deliberative Process (DP) sy topics that we might explore as potential options moving Ex. 5 Deliberative Process (DP) |
| Ex | . 5 Deliberat | ive Process (DP) |
| Ex. 5 Deliberative F meeting invi E regarding th | te that I received from them. I think if could be solved by DGC me | Ex. 5 Deliberative Process (DP) Iso facing a petition from FWW on CAFOs, I will forward you a d be beneficial to Ex. 5 Deliberative Process (DP) entioned that FWW may want to have a discussion with us o distant future. Ex. 5 Deliberative Process (DP) |
| As I mention | ed, below is the draft briefing outline, | Ex. 5 Deliberative Process (DP) |
| | Ex. 5 Delibera | tive Process (DP) |
| Very draft b | iefing outline: | |

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Marcus Zobrist | Chief, Industrial Branch

U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-8311 | Mobile | Ex. 6 Personal Privacy (PP) |
Zobrist.Marcus@epa.gov

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Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/9/2021 3:01:10 PM

To: Utting, George [Utting.George@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: RE: draft agenda for CAFO briefing mtg tomorrow Attachments: OW CAFO Briefing Prep 10Aug agenda.docx

Sorry, forgot to attach v.2.

Jenny Molloy (she/her/hers)

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) (while working remotely)

From: Molloy, Jennifer

Sent: Monday, August 9, 2021 10:55 AM

To: Utting, George < Utting.George@epa.gov>; Zobrist, Marcus < Zobrist.Marcus@epa.gov>; Durant, Chelsea

<durant.chelsea@epa.gov>

Subject: RE: draft agenda for CAFO briefing mtg tomorrow

Thanks, I added it.

Jenny Molloy (she/her/hers)

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) (while working remotely)

From: Utting, George < ttting.George@epa.gov>

Sent: Monday, August 9, 2021 10:41 AM

To: Molloy, Jennifer < molloy.jennifer@epa.gov >; Zobrist, Marcus < Zobrist.Marcus@epa.gov >; Durant, Chelsea

<durant.chelsea@epa.gov>

Subject: RE: draft agenda for CAFO briefing mtg tomorrow

Ex. 5 Deliberative Process (DP)

From: Molloy, Jennifer < molloy.jennifer@epa.gov>

Sent: Monday, August 9, 2021 10:32 AM

To: Zobrist, Marcus <Zobrist. Marcus@epa.gov>; Utting, George <Utting. George@epa.gov>; Durant, Chelsea

<durant.chelsea@epa.gov>

Subject: draft agenda for CAFO briefing mtg tomorrow

We said we'd send an agenda around for tomorrow's meeting, so I drafted one. Please make any changes you would like to see by this afternoon and then I'll add it to the meeting invite.

Thanks, Jenny

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

Ex. 6 Personal Privacy (PP) (While working remotely)

Agenda

OW CAFO Briefing Prep

10 August 2021

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/9/2021 2:31:44 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]

Subject: draft agenda for CAFO briefing mtg tomorrow Attachments: OW CAFO Briefing Prep 10Aug agenda.docx

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Thanks, Jenny

Jenny Molloy (she/her/hers)
U.S. Environmental Protection Agency
Water Permits Division

Ex. 6 Personal Privacy (PP) (While working remotely)

Agenda

OW CAFO Briefing Prep

10 August 2021

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 5/28/2021 4:19:29 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]

CC: Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]

Subject: RE: CAFO / 304(m) New Litigation

I don't. I don't have good contacts to the air program anymore. I agree this is a good idea – we could go through Krista in OGC to ask her OGC counterpart of an air program contact, which might be the easiest way to reach them. Would you be ok asking her?

From: Molloy, Jennifer <molloy.jennifer@epa.gov>

Sent: Friday, May 28, 2021 7:44 AM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea

<durant.chelsea@epa.gov>

Subject: RE: CAFO / 304(m) New Litigation

Marcus:

Do you know who in the Air program would be the contact for this petition? Maybe we should do a little reconnoitering

with them to find out Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Jenny Molloy

U.S. Environmental Protection Agency

Water Permits Division

Ex. 6 Personal Privacy (PP) while working remotely)

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Tuesday, May 25, 2021 5:03 PM

To: Hughes, Krista < hughes.krista@epa.gov>; Molloy, Jennifer < molloy.jennifer@epa.gov>; Utting, George < Utting.George@epa.gov>; Flanders, Phillip < Flanders.Phillip@epa.gov>; Shriner, Paul < Shriner.Paul@epa.gov>;

Kupchan, Simma < Kupchan.Simma@epa.gov > Cc: Levine, MaryEllen < levine.maryellen@epa.gov >

Subject: RE: CAFO / 304(m) New Litigation

Attached is the Petition for rulemaking with respect to dairy (500+ cows) and hog (1000+ hogs) operations under the CAA Section 111 as significant sources of air pollution that I mentioned on the call today. The petition was filed on April 6, 2021. FWW is one of the petitioners.

As I mentioned, the petition is clear that biogas / energy recovery is not a preferred option in their view. This petition appears to be an alternative approach to a petition to regulate emissions as a significant source of GHG which the Agency denied in 2017.

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:20 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen; Zobrist, Marcus **Subject:** CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

fyi

----Original Appointment-----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:07 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen

Subject: CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Thank you, Krista

Microsoft Teams meeting

Join on your computer or mobile app Click here to join the meeting

Or call in (audio only)

Ex. 6 Personal Privacy (PP)

United States, Washington DC

Phone Conference ID: Ex. 6 Personal Privacy (PP) Find a local number | Reset PIN

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<u>Learn More | Meeting options</u>

Utting, George From:

Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP)

Sent: 5/24/2021 3:20:11 PM

To: Marcus Zobrist (Zobrist.Marcus@epa.gov) [Zobrist.Marcus@epa.gov]

Subject: FW: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM End: 5/25/2021 8:00:00 PM

Show Time As: Tentative

fyi

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:07 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen

Subject: CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thank you, Krista

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|---|----|----|----|
| | | | |

From: Pritts, Jesse [Pritts.Jesse@epa.gov]

Sent: 7/29/2021 2:04:20 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov]

CC: Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea

[durant.chelsea@epa.gov]; Scozzafava, MichaelE [Scozzafava.MichaelE@epa.gov]

Subject: RE: CAFO strategic direction - starting a conversation

Hi Marcus,

| The plan you outlined sounds like a good app | roach. It will be informative to hear what the air program is thinkin | g. Paul |
|---|---|---------|
| and I are going to talk this afternoon about | Ex. 5 Deliberative Process (DP) | |
| Ex. 6 Deliberative Process (DP) Shall we plan to touch base after | that and discuss next steps? | |
| | | |

Thanks

From: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Sent: Wednesday, July 28, 2021 5:29 PM

To: Pritts, Jesse < Pritts.Jesse@epa.gov>; Shriner, Paul < Shriner.Paul@epa.gov>

Cc: Molloy, Jennifer <molloy.jennifer@epa.gov>; Utting, George <Utting.George@epa.gov>; Durant, Chelsea

<durant.chelsea@epa.gov>; Scozzafava, MichaelE <Scozzafava.MichaelE@epa.gov>

Subject: CAFO strategic direction - starting a conversation

Jesse and Paul,

| I had a brief conversation with Scozz today on CAFOs, I | he suggested that I reach out to both of you. Last week, at the |
|---|---|
| Plan 14 briefing, Radhika requested a further briefing | Ex. 5 Deliberative Process (DP) |

Ex. 5 Deliberative Process (DP)

Very draft briefing outline:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Marcus Zobrist | Chief, Industrial Branch

U.S. Environmental Protection Agency
Office of Wastewater Management | Water Permits Division
Office: (202) 564-831.1 | Ex. 6 Personal Privacy (PP) |
Zobrist.Marcus@epa.gov

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From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/2/2021 6:50:21 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

[Savitske.Gregory@epa.gov]; Breedlove, Dan [Breedlove.Dan@epa.gov]; Utting, George [Utting.George@epa.gov]; Durant, Chelsea [durant.chelsea@epa.gov]; Bathersfield, Nizanna [Bathersfield.Nizanna@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Hughes, Krista [hughes.krista@epa.gov];

Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional

Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

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Sent: 5/24/2021 3:07:20 PM

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[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

Show Time As: Busy

Required Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

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Ex. 5 Attorney Client (AC)

Thank you, Krista

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| <u>Learn More Meeting options</u> | | |
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| | | |

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/24/2021 3:07:20 PM

To: Hughes, Krista [hughes.krista@epa.gov]; Molloy, Jennifer [molloy.jennifer@epa.gov]; Utting, George

[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

Kupchan, Simma [Kupchan.Simma@epa.gov]

CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: 443-752-9849

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

Show Time As: Busy

Required Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Attendees:

Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

Hi All,

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Message

From: Zobrist, Marcus [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP

(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=844DEB75A43B4D319C6ADCAF8A5B2E4B-MZOBRIST]

Sent: 10/22/2021 1:04:55 PM

To: Thomas, Chris [Thomas.Chris@epa.gov]
CC: Hesterlee, Craig [Hesterlee.Craig@epa.gov]

Subject: RE: CAFOs

Attachments: OW CAFO Strategy draft v 15Oct.pptx

See attached. Appreciate if you have any high level thoughts on this.

From: Thomas, Chris < Thomas. Chris@epa.gov>

Sent: Friday, October 22, 2021 8:47 AM

To: Zobrist, Marcus <Zobrist.Marcus@epa.gov> **Cc:** Hesterlee, Craig <Hesterlee.Craig@epa.gov>

Subject: RE: CAFOs

Assuming the options briefing doc for Radhika is close hold? Would love to see it if you can share, but if you can't I understand. There is a lot of work yet to be done in this sector.

From: Zobrist, Marcus < Zobrist. Marcus@epa.gov>

Sent: Thursday, October 21, 2021 4:31 PM **To:** Thomas, Chris < Thomas. Chris@epa.gov> **Cc:** Hesterlee, Craig < Hesterlee. Craig@epa.gov>

Subject: RE: CAFOs

Thanks, sobering article. We also have the attached one from a few years ago that is also stunning.

Ex. 5 Deliberative Process (DP)

From: Thomas, Chris < Thomas.Chris@epa.gov>
Sent: Thursday, October 21, 2021 4:05 PM
To: Zobrist, Marcus < Zobrist.Marcus@epa.gov>
Cc: Hesterlee, Craig < Hesterlee.Craig@epa.gov>

Subject: CAFOs

From yesterday. Note the uncovered chicken litter piles discussed with photos.

Good discussion and examples of EJ struggles included. We can discuss more if you want.

Unchecked growth of industrial animal farms spurs long fight for environmental justice in Eastern NC wunc

... local residents push back against decades of air and water pollution. ... Georgia and poultry is the top agricultural industry in the state.

Chris

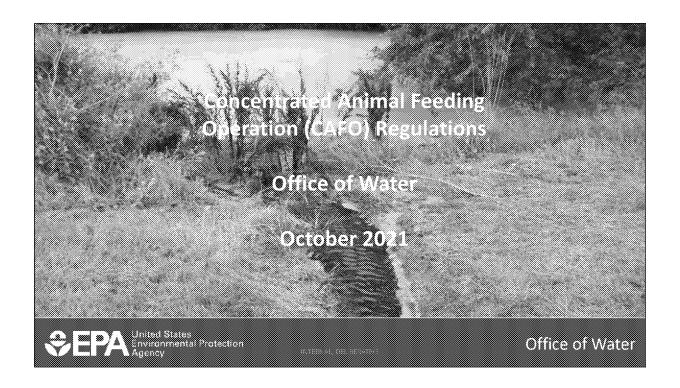
Chris Thomas

Chief, Permitting and Grants Branch

Water Division EPA Region 4, Atlanta 404-562-9459

Stay Safe & Mask Up





Outcomes for Today's Briefing Overview. Ex. 5 Deliberative Process (DP) Section 1. Section 2. Section 3. Section 4. Deliberative Process (DP) Office of Water

Section 1.

Ex. 5 Deliberative Process (DP)

NPDES CAFO Regulations have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines
have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)

- Approximately one-third of Large CAFOs in the U.S. are covered under NPDES permits. Few Medium CAFOS, and essentially no Small CAFOs are covered under NPDES permits.
- * There are four petitions (3 water, 1 air) before the agency to revise CAFO regulations to make them more ELS Deliberative Process (DP) See Appendix A.

¹ See also May OW briefing materials



Focus of EPA Enforcement:

- CAFOs were an OECA National Enforcement Initiative (NEI) for 14 years (FY05 FY18) a variety of approaches
 were tried to increase Clean Water Act compliance and NPDES permit coverage. During the last eight years of the
 NEI, EPA conducted 1,488 CAFO inspections and concluded 264 CAFO administrative actions and six civil judicial
 actions.
- Since FY19, CAFOs have been returned to the NPDES core program.

No new EPA civil judicial actions in recent years because:

• NPDES is a "state-driven" program –i.e., majority of states (47) are authorized to implement the program so they issue most permits, conduct most inspections, and take most enforcement actions.

Ex. 5 Deliberative Process (DP)



Office of Water

a,

Section 2.

Ex. 5 Deliberative Process (DP)

CAFOs house, feed, and raise thousands of animals in confined locations.

Ex. 5 Deliberative Process (DP)

- In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways.
- * Pollutants associated with CAFO animal waste include nitrogen and phosphorus; disease-causing viruses and bacteria including *E. coli*; antibiotics and other drugs; metals; pesticides; and hormones.
- * CAFOs can cause nitrate and other pollutant contamination of ground water.
- * Pathogens from CAFOs have been associated with food-borne illness outbreaks from crops (E. coli).

Ex. 5 Deliberative Process (DP)



• One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia.
- * CAFOs emit greenhouse gases, and therefore contribute to climate change.
 - While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA has assessed manure from animal agriculture as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions in the US.



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

⇒ EPA Amitod Status Protection

Office of Water

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

⇒ EPA United States Environmental Protection Agency

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Office of Water

Ex. 5 Deliberative Process (DP)



Office of Water

Section 3.

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



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Section 4. Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

Office of Water Process (DP)

Section 4. Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)



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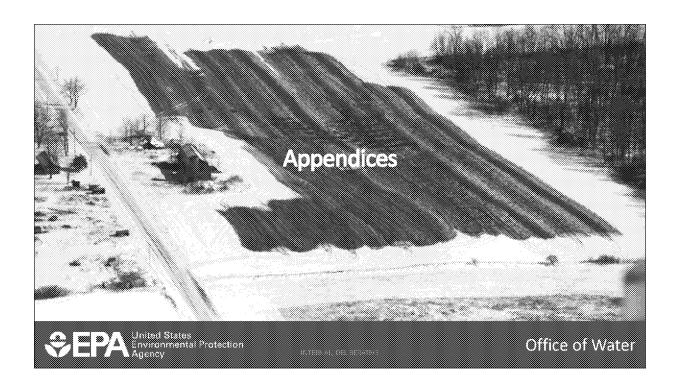
Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

INTERNAL, DELIBERATIVE



Appendix A. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- * Food and Water Watch. 2021. Petition for review of EPA's statement determining that revisions of the ELGs for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



From: Molloy, Jennifer [molloy.jennifer@epa.gov]

Sent: 8/2/2021 6:50:22 PM

To: Molloy, Jennifer [molloy.jennifer@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Shriner, Paul

[Shriner.Paul@epa.gov]; Buterbaugh, Kristin [Buterbaugh.Kristin@epa.gov]; Greenwald, Kathryn [Greenwald.Kathryn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Savitske, Greg

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Pilant, Drew [Pilant.Drew@epa.gov]; Jann, Stephen [jann.stephen@epa.gov]; Gluckman, Matthew

[gluckman.matthew@epa.gov]

CC: Senkayi, Abu [Senkayi.Abu@epa.gov]; Cooper, WilliamF [Cooper.WilliamF@epa.gov]; Gold, Peter

[Gold.Peter@epa.gov]

Subject: CAFO OW Briefing planning Location: Microsoft Teams Meeting

Start: 8/10/2021 1:00:00 PM **End**: 8/10/2021 2:00:00 PM

Show Time As: Busy

Required Pritts, Jesse; Shriner, Paul; Buterbaugh, Kristin; Greenwald, Kathryn; Kupchan, Simma; Savitske, Greg; Breedlove,

Attendees: Dan; Utting, George; Durant, Chelsea; Bathersfield, Nizanna; Zobrist, Marcus; Levine, MaryEllen; Hughes, Krista;

Pilant, Drew; Jann, Stephen; Gluckman, Matthew

Optional

Senkayi, Abu; Cooper, WilliamF; Gold, Peter

Attendees:

Ex. 6 Personal Privacy (PP)

Agenda:

1. Agree on Purpose of Briefing

Ex. 5 Deliberative Process (DP)

2. Agree on Content

Some suggestions:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

3. Next Steps for Briefing Prep

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[Utting.George@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Shriner, Paul [Shriner.Paul@epa.gov];

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CC: Levine, MaryEllen [levine.maryellen@epa.gov]; Zobrist, Marcus [Zobrist.Marcus@epa.gov]

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Optional Levine, MaryEllen; Marcus Zobrist (Zobrist.Marcus@epa.gov)

Attendees:

fyi

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:07 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen

Subject: CAFO / 304(m) New Litigation

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Where: Microsoft Teams Meeting

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From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 4/19/2021 1:11:16 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: Fwd: Appendix A for the briefing document on the CAFO petitions (revised to address comments)

Attachments: Appendix A for Petitions to Revise CAFO Regulations final.docx

Sent from my iPhone

Begin forwarded message:

From: "Utting, George" < Utting.George@epa.gov> **Date:** December 10, 2020 at 4:25:04 PM EST **To:** "Zobrist, Marcus" < Zobrist.Marcus@epa.gov>

Subject: RE: Appendix A for the briefing document on the CAFO petitions (revised to address

comments)

This is the correct attachment.

From: Utting, George

Sent: Thursday, December 10, 2020 4:02 PM

To: Marcus Zobrist (Zobrist.Marcus@epa.gov) <Zobrist.Marcus@epa.gov>

Subject: Appendix A for the briefing document on the CAFO petitions (revised to address comments)

The attached document is Appendix A for the briefing document on the CAFO petitions.

Ex. 5 Deliberative Process (DP)

Message

From: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Sent: 9/24/2021 8:22:47 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: OW CAFO Strategy draft .pptx Attachments: OW CAFO Strategy draft .pptx

Flag: Follow up

Jesse, Simma, Mary Ellen, Krista,

As we talked about last week, attached is the draft briefing on a CAFO Strategy, per the request from Radhika. This still needs some work, but you can see where this is going.

Jesse, as we discussed, want to make sure OST is comfortable with these options, since they have potential workload implications for both of our shops.

| Team OGC: one area tha | t would benefit from your revi | ew E | x. 5 Attorney Client (AC) | |
|------------------------|--------------------------------|----------------|----------------------------|----|
| | Ex. 5 Attorney Clie | ent (AC) | Also, some | of |
| these are ideas are | Ex. 5 Attorney Client (AC) | . For example, | Ex. 5 Attorney Client (AC) | |
| | Ex. 5 Attorne | y Client (AC |) | |



| Overview. | Ex. 5 Deliberative Process (DP) |
|---------------------------------|---------------------------------|
| Ex. 5 | Deliberative Process (DP) |
| Section 1. | |
| Section 2. | Ex. 5 Deliberative Process (DP) |
| Section 3. | , |
| Section 4. C | AFO Petitions Currently Pending |
| Section 5. | Ex. 5 Deliberative Process (DP) |
| Ex. 5 Deliberative Process (DP) | |

CAFOs house, feed, and raise thousands of animals in confined locations Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- In 2008, the EPA estimated that approximately 75 percent of CAFOs discharge pollution into waterways1.
- Animal waste contains a number of pollutants. Pollutants associated with CAFO animal waste include: nitrogen and phosphorus; disease-causing viruses and bacteria including E. coli; antibiotics; pesticides; and
- CAFOs can cause nitrate and other pollutant contamination of ground water.
- Pathogens from CAFOs have been associated with food-borne illness outbreaks associated with-from crops

Ex. 5 Deliberative Process (DP)

⁴ 9th Citting 2003 rule



Section 1.

Ex. 5 Deliberative Process (DP)

* One of the most common complaints associated with CAFOs are the odors produced.

Ex. 5 Deliberative Process (DP)

- * Air pollutants: volatile compounds such as methane, hydrogen sulfide, and ammonia²
- * CAFOs also emit greenhouse gases, and therefore contribute to climate change.
 - While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are, respectively, 23 and 300 times more potent as greenhouse gases than carbon dioxide.
 - EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions (EPA, 2009).

¹ https://www.cdc.gov/nceh/ehs/Docs/Understanding_CAFOS_NALBOH.pdf (Page 7) ² 9th C citing 2003, proposed rule



* EPA regulates both production areas and land-application areas of CAFOs.

Ex. 5 Deliberative Process (DP)

EPA's CAFO-specific regs include the CAFO ELG (40 CFR 412) and permitting regs at 40 CFR 122.23.

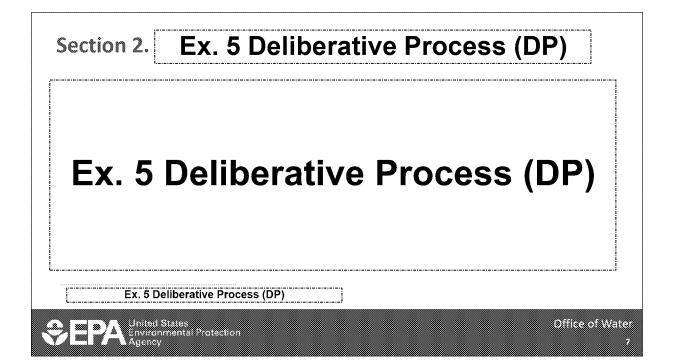


Office of Water

Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)



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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)



Section 4. CAFO Petitions Currently Pending

There are currently 4 petitions pending before the agency specifically requesting improvements to the regulations for CAFOs: 3 pertain to Clean Water Act regulations and 1 pertains to Clean Air Act regulations.

- E. Brotzman. 2015. Rulemaking Petition to lower the threshold that qualifies animal feeding operations as concentrated animal feeding operations and thereby point sources under § 402 of the Clean Water Act.
- * Food and Water Watch, et al. 2017. Petition to Revise the Clean Water Act Regulations for Concentrated Animal Feeding Regulations.
- Food and Water Watch. 2021. Petition for review of EPA's final action determining that revisions of the effluent limitation guidelines for the Concentrated Animal Feeding Operation industrial point source category is not appropriate at this time.
- Public Justice Foundation, et al. 2021. Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act.



Office of Water

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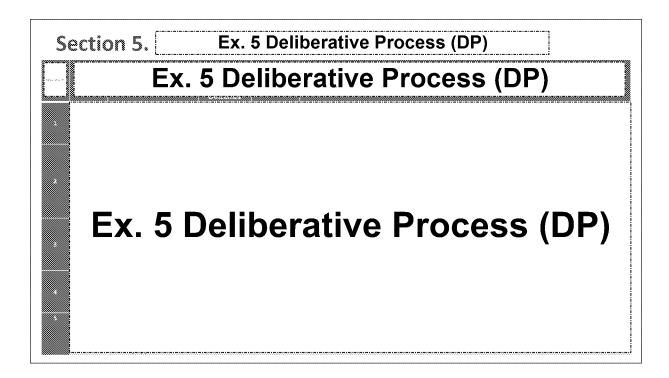
Section 5. Ex. 5 Deliberative Process (DP)

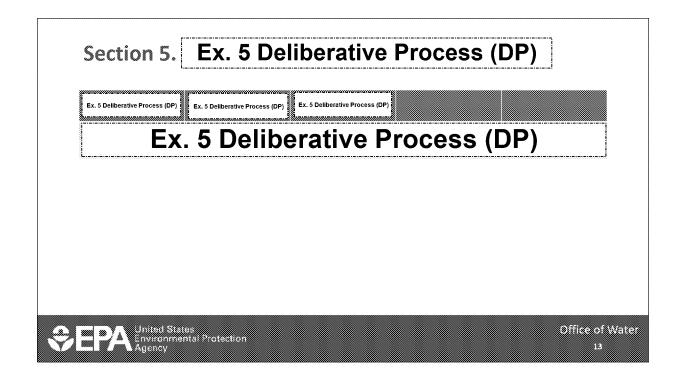
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

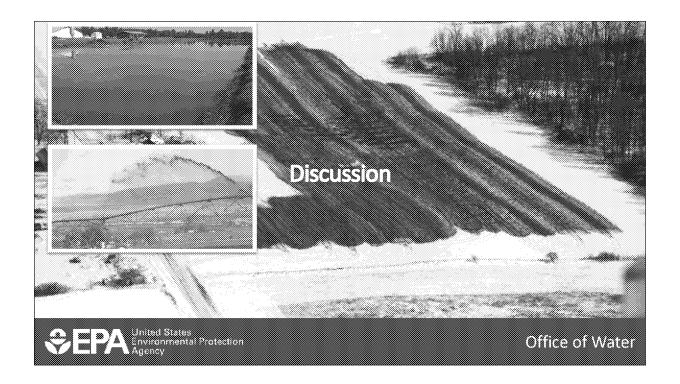
Office of Water Agency

Ex. 5 Deliberative Process (DP)





Ex. 5 Deliberative Process (DP)



Ex. 5 Deliberative Process (DP)

 NPDES Regulations for CAFOs have been promulgated/revised in 1976, 2003, 2008, and 2012. Effluent Limitation Guidelines have been promulgated/revised in 1974 and 2003.

Ex. 5 Deliberative Process (DP)



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| E | 5 Deliberative Process (DP) |
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| Ev l | Deliberative Presses (DD) |
| EX. | Deliberative Process (DP) |
| | |

Message

From: Hughes, Krista [hughes.krista@epa.gov]

Sent: 5/25/2021 9:06:32 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: RE: CAFO / 304(m) New Litigation

Thank you, Marcus!

Krista Hughes
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
202-564-4227
Hughes.Krista@epa.gov

From: Zobrist, Marcus <Zobrist.Marcus@epa.gov>

Sent: Tuesday, May 25, 2021 5:03 PM

To: Hughes, Krista hughes.krista@epa.gov; Molloy, Jennifer hughes.krista@epa.gov; Molloy, Jennifer hughes.krista@epa.gov; Hughes, Krista hughes.krista@epa.gov; Hughes, Krista hughes.krista@epa.gov; Hughes, Krista hughes.krista@epa.gov; Hughes, Krista hughes.krista@epa.gov; Hughes, Hughes

Kupchan, Simma < Kupchan. Simma@epa.gov>
Cc: Levine, MaryEllen < levine.maryellen@epa.gov>

Subject: RE: CAFO / 304(m) New Litigation

Attached is the Petition for rulemaking with respect to dairy (500+ cows) and hog (1000+ hogs) operations under the CAA Section 111 as significant sources of air pollution that I mentioned on the call today. The petition was filed on April 6, 2021. FWW is one of the petitioners.

As I mentioned, the petition is clear that biogas / energy recovery is not a preferred option in their view. This petition appears to be an alternative approach to a petition to regulate emissions as a significant source of GHG which the Agency denied in 2017.

----Original Appointment-----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:20 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen; Zobrist, Marcus **Subject:** CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

fyi

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

Sent: Monday, May 24, 2021 11:07 AM

To: Hughes, Krista; Molloy, Jennifer; Utting, George; Flanders, Phillip; Shriner, Paul; Kupchan, Simma

Cc: Levine, MaryEllen

Subject: CAFO / 304(m) New Litigation

When: Tuesday, May 25, 2021 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Microsoft Teams Meeting

Hi All,

The purpose of this meeting is to discuss options for responding to the petition for review we received last week challenging statements in Program Plan 14 indicating that EPA is not revising the CAFO ELGs. The petition for review, Food & Water Watch's 2017 petition for rulemaking, and a summary of Food & Water Watch's 2017 petition are attached. An initial outline of the options for discussion is below:

Ex. 5 Attorney Client (AC)

Thank you, Krista

Microsoft Teams meeting

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Ex. 6 Personal Privacy (PP) United States, Washington DC

Phone Conference ID Ex. 6 Personal Privacy (PP)

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From: Utting, George [Utting.George@epa.gov]

Sent: 5/24/2021 3:20:11 PM

To: Zobrist, Marcus [Zobrist.Marcus@epa.gov]

Subject: FW: CAFO / 304(m) New Litigation

Attachments: 1 - Petition for Review.pdf; FWW citizens_cafo_cwa_petition.pdf; FWW Petition SUmmary July 11.docx

Location: Microsoft Teams Meeting

Start: 5/25/2021 7:30:00 PM **End**: 5/25/2021 8:00:00 PM

Show Time As: Tentative

fyi

----Original Appointment----

From: Hughes, Krista < hughes.krista@epa.gov>

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Thank you, Krista

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